



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF HEARINGS AND APPEALS
400 MARYLAND AVENUE, S.W.
WASHINGTON, D.C. 20202
TELEPHONE (202) 245-8300

[Complainant],

Complainant

Docket No.: 21-26-CP

Reprisal for Disclosure Proceeding

v.

OIG: REDACTED

Dekalb County School District,

Grantee

Appearances: [Complainant] for self.

Sonya E. Sallis and Jenna B. Rubin, Gregory, Doyle, Calhoun & Rogers, LLC,
Marietta, GA, for Dekalb County School District.

Before: Daniel J. McGinn-Shapiro, Administrative Law Judge

ORDER

This decision and order address a complaint filed with the U.S. Department of Education's Office of the Inspector General (OIG) by [Complainant] ([Complainant]) against her former employer, the Dekalb County School District (DCSD). DCSD is the third largest school district in the state of Georgia, employing approximately 15,500 employees.¹ It has over 20 high schools divided into academic regions with each region led by a regional superintendent.² DCSD is both

¹ *About*, Dekalb County School District, *available at* <https://www.dekalbschoolsga.org/about/> (last visited on July 23, 2021); U.S. Dep't of Educ., Office of Inspector General Report of Investigation (June 18, 2021) (hereafter *OIG Report*) at 2 [pages indicate the page number within the PDF in the official file on the Office of Hearings and Appeals online filing system].

² *Id.*

a grantee and subgrantee of grant programs administered by the U.S. Department of Education (the Department).³ Between 2018 and 2020, [Complainant] was the principal at Towers High School (THS), a high school in DCSD.⁴

On July 1, 2020, OIG received [Complainant]'s complaint. Her complaint asserts that she reported concerns to multiple DCSD employees about the administration of Title I funds, a failure to comply with requirements related to the support of students with disabilities, and violations of the Strategic Waivers School System program.⁵ [Complainant] asserts in her complaint to OIG that as a result of her disclosures, DCSD placed her on administrative leave with pay (ALWP) and then terminated her employment, and that these acts of retaliation violated whistleblower protections.⁶ More specifically, [Complainant] complained to OIG that she believes that these employment actions were reprisals in violation of the protections provided by 41 U.S.C § 4712, the National Defense Authorization Act of FY 2013 (the NDAA).⁷ On June 25, 2021, OIG sent the Secretary of Education (the Secretary) a report from OIG's investigation.⁸ That same day, redacted copies of the OIG report were sent to both [Complainant] and representatives for DCSD.⁹

The Secretary has delegated to the Office of Hearings and Appeals the responsibility of

³ OIG Report at 2, Attachment 2 to OIG Report.

⁴ OIG Report at 2; Attachment 3 to OIG Report – OIG Notes from Interview with [Complainant] (Sept. 29, 2020) at 1.

⁵ OIG Report at 1; Attachment 1 to OIG Report – OIG Whistleblower Reprisal Complaint form (hereafter OIG Complaint) at 4, 6, 8. In her complaint to OIG, [Complainant] also alleges violations of Title VII of the Civil Rights Act of 1964 and general statements about inequitable practices by the DCSD's Office of Legal Affairs. Although she asserts that she expressed concerns to others related to the Title VII violations, [Complainant] does not indicate when she expressed these concerns, to whom she expressed these concerns, or if these violations relate to the administration of federal grant programs or the use of federal funds. [Complainant] has not indicated if she has raised her concerns about the Office of Legal Affairs with anyone prior to her OIG complaint or how her allegations about DCSD's legal office relate to federal grants or contracts. Therefore, [Complainant] does not appear to fully state a claim for retaliation under the NDAA as it relates to the disclosures about Title VII or the allegations about DCSD's legal affairs department, and these disclosures are not at issue in this matter.

⁶ OIG Report at 1; OIG Complaint at 5, 7.

⁷ OIG Complaint at 2.

⁸ Letter from Sandra D. Bruce to the Hon. Miguel Cardona (June 25, 2021).

⁹ Letter from Sandra D. Bruce to [Complainant] (June 25, 2021); Letter from Sandra D. Bruce to Cheryl Watson-Harris (June 25, 2021).

rendering a final agency decision and order on behalf of the Secretary in matters relating to whistleblower complaints filed pursuant to the NDAA. On June 25, 2021, the Director of the Office of Hearings and Appeals assigned this case to the undersigned. The parties were offered the opportunity to submit additional evidence and to appear in an in-person or video hearing to make arguments, confront adverse evidence, and cross-examine witnesses. Both parties waived the opportunity for such a hearing and were provided the opportunity to submit written arguments and relevant documents, which both parties submitted on July 12, 2021.

The NDAA addresses retaliation by a federal grant recipient (grantee) against an employee for whistleblowing. The statute prohibits a grantee from retaliating against an employee by discharging, demoting, or otherwise discriminating against the employee for disclosing “information that the employee reasonably believes is evidence of gross mismanagement of a Federal . . . grant, a gross waste of Federal funds, an abuse of authority relating to a Federal . . . grant, . . . or a violation of law, rule, or regulation related to a Federal . . . grant”.¹⁰ It protects employee’s disclosures to seven groups of individuals, including a “management official or other employee of the . . . grantee who has the responsibility to investigate, discover, or address misconduct.”¹¹

If an employee believes they have been subject to a reprisal in violation of the statute, the employee may submit a complaint to OIG within three years of the reprisal.¹² If OIG determines that the complaint is not frivolous, that it alleges a violation of the statute, and that it has not been previously addressed in another federal or state judicial or administrative proceeding initiated by the employee, then OIG will investigate the complaint and, upon completion of the investigation,

¹⁰ 41 U.S.C. § 4712(a)(1).

¹¹ 41 U.S.C. § 4712(a).

¹² 41 U.S.C. § 4712(b).

submit a report of the findings of the investigation to the employee, the employer, and the Secretary.¹³

Upon receipt of the OIG report, the Secretary or designee must issue the agency decision and order within 30 days.¹⁴ The decision must address “whether there is sufficient basis to conclude that the . . . grantee concerned has subjected the complainant to a reprisal.”¹⁵ The statute provides that if there was a reprisal, the Secretary will order the entity to:

- (1) “take affirmative action to abate the reprisal”
- (2) reinstate the employee “to the position that the person held before the reprisal, together with compensatory damages (including back pay), employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken” or
- (3) “pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys’ fees and expert witnesses’ fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal, as determined by the head of the executive agency.”¹⁶

In this matter, OIG’s investigation “did not substantiate [Complainant]’s allegations of whistleblower reprisal.”¹⁷ The OIG investigation found that [Complainant] made protected disclosures and that [Complainant] met her burden of showing that the disclosures were a contributing factor in the decision to place her on leave.¹⁸ OIG’s investigation, however, concluded that DCSD provided clear and convincing evidence that it would have placed [Complainant] on ALWP independent of the disclosures.¹⁹ Additionally, the OIG investigation concluded that [Complainant] did not meet her burden of showing that her disclosures contributed

¹³ Id.

¹⁴ 41 U.S.C. § 4712(c)(1).

¹⁵ Id.

¹⁶ Id.

¹⁷ OIG Report at 1.

¹⁸ OIG Report at 1.

¹⁹ OIG Report at 1, 12.

to DCSD's decision to fire her.²⁰

ISSUES

[Complainant]'s complaint asserts that the decisions to place her on administrative leave with pay and then subsequently fire her were acts of reprisal. She alleges that these actions were taken to retaliate for protected disclosures that she made to DCSD employees. Specifically, [Complainant] contends that she was retaliated against for disclosing violations of rules and laws and gross mismanagement and waste of funds related to the use of Title I funds, support for students with disabilities, and the Georgia Strategic School Waiver Program.²¹

DCSD asserts that the employment actions were not retaliatory. DCSD contends that [Complainant] was placed on ALWP to allow it an opportunity to investigate concerns about whether [Complainant] was dishonest on her application for certification with the Georgia Professional Standards Commission (PSC) and to protect her from negative backlash from THS faculty. DCSD further contends that the Acting Superintendent of DCSD terminated [Complainant]'s employment both because DCSD's investigation revealed her dishonesty on her application for employment with DCSD and because [Complainant] allegedly altered a money order to steal \$950 from THS, for which she was arrested and charged with theft.

The issues to be addressed are:

1. Did [Complainant] meet her initial burden of showing that (1) she was an employee of a grantee of a grant administered by the Department; (2) she made a disclosure or disclosures protected by 41 U.S.C. § 4712; and (3) the disclosures were "contributing factors" in the employment actions taken against her by DCSD?
2. If [Complainant] met her initial burden, did DCSD demonstrate, by clear and convincing evidence, that it would have taken the same employment actions in the absence of [Complainant]'s disclosures?

²⁰ OIG Report at 1, 9.

²¹ OIG Report at 1, OIG Complaint.

SUMMARY OF ORDER

[Complainant] has established that she made protected disclosures and those disclosures were contributing factors in the decision to place her on administrative leave with pay. However, [Complainant] has not established that her disclosures contributed to the decision to terminate her employment. DCSD has clearly and convincingly shown that it would have taken the same employment actions even if [Complainant] had not made her disclosures. DCSD did not subject [Complainant] to a reprisal in violation of the protections provided by the NDAA.

FINDINGS OF FACT

Background before Disclosures

Between 2005 and 2014, [Complainant] served in various teaching positions in DCSD before leaving in 2014.²² Specifically, in 2005, [Complainant] was hired as a substitute teacher and then, in 2006, as a full-time teacher at schools within DCSD.²³ [Complainant] returned to DCSD during the 2015-2016 academic year to become an assistant principal at a high school in DCSD.²⁴ In 2018, [Complainant] became principal of THS and remained in that position until she was terminated in March 2020.²⁵

Before becoming certified to teach in the state of Georgia, in July 2004, [Complainant] was charged with a felony.²⁶ At that time, [Complainant] was working as a police office assistant with

²² OIG Report at 2, Attachment 3 to OIG Report – OIG Notes from Interview with [Complainant] (Sept. 29, 2020) at 1; Brief of [Complainant] (July 12, 2021) at 2.

²³ OIG Report at 2, Attachment 3 to OIG Report – OIG Notes from Interview with [Complainant] (Sept. 29, 2020) at 1.

²⁴ Attachment 3 to OIG Report – OIG Notes from Interview with [Complainant] (Sept. 29, 2020) at 1; Brief of [Complainant] (July 12, 2021) at 2.

²⁵ OIG Report at 3; Attachment 3 to OIG Report – OIG Notes from Interview with [Complainant] (Sept. 29, 2020) at 1; Brief of [Complainant] (July 12, 2021) at 2.

²⁶ Attachment 19 to OIG Report – Letter from Georgia Professional Standards Commission to [Complainant] (Sept. 16, 2019) at 4; Attachment 31 to OIG Report – Atlanta Police Department Open Records Request Response at 27. Although the facts that [Complainant] was charged with different crimes, allegedly participated in a pre-trial intervention program before coming to DCSD, and was accused on making misleading statements on different

the Atlanta Police Department.²⁷ According to the complaint filed against [Complainant], a police officer discovered an unauthorized purchase on his account at a Lowes store and, after calling the store, he learned that the order had been made online and a female had come to the store to pick up the purchase.²⁸ The police officer filed a police report and the subsequent investigation implicated [Complainant].²⁹ On July 23, 2004, [Complainant] was arrested.³⁰ On July 26, 2004, [Complainant] was “dismissed from the Atlanta Police Department.”³¹

[Complainant] completed a pre-trial intervention (PTI) program and the case was dismissed on May 23, 2006.³² [Complainant] requested that the criminal charge be expunged based on the need to “remain certified in her profession.”³³ The judge initially denied the request for expungement, but the charge was eventually expunged in April 2007.³⁴

On July 10, 2006, [Complainant] applied for certification with the PSC.³⁵ On her PSC application, [Complainant] answered “no” to all personal affirmation questions, including whether she ever participated in a PTI for a felony or a crime of moral turpitude.³⁶

DCSD’s former interim superintendent and its Office of Legal Affairs have asserted that when [Complainant] applied for employment with DCSD, she indicated on her application that

documents is relevant to the justifications that DCSD presents for the employment actions at issue in this case, this decision does not consider or make any determination on whether [Complainant] did in fact any crimes for which she was accused or make any untruthful statements.

²⁷ Attachment 31 to OIG Report – Atlanta Police Department Open Records Request Response at 4, 6, 28.

²⁸ Attachment 31 to OIG Report – Atlanta Police Department Open Records Request Response at 6, 13.

²⁹ Attachment 31 to OIG Report – Atlanta Police Department Open Records Request Response at 6, 11, 13.

³⁰ Attachment 31 to OIG Report – Atlanta Police Department Open Records Request Response at 6, 12.

³¹ Attachment 31 to OIG Report – Atlanta Police Department Open Records Request Response at 6.

³² Attachment 19 to OIG Report – Letter from Georgia Professional Standards Commission to [Complainant] (Sept. 16, 2019) at 4; Attachment 31 to OIG Report – Atlanta Police Department Open Records Request Response at 12.

³³ Attachment 19 to OIG Report – Letter from Georgia Professional Standards Commission to [Complainant] (Sept. 16, 2019) at 4.

³⁴ Attachment 19 to OIG Report – Letter from Georgia Professional Standards Commission to [Complainant] (Sept. 16, 2019) at 4.

³⁵ Attachment 19 to OIG Report – Letter from Georgia Professional Standards Commission to [Complainant] (Sept. 16, 2019) at 4.

³⁶ Attachment 19 to OIG Report – Letter from Georgia Professional Standards Commission to [Complainant] (Sept. 16, 2019) at 4.

she had never resigned from a position or been discharged from a position.³⁷ They additionally asserted that [Complainant] stated on her application that she had left her position at the Atlanta Police Department because of a layoff.³⁸

[Complainant] told OIG investigators that when she became principal at THS, she found staffing issues, low morale, and that the administration did not appear to focus on the students.³⁹ Throughout her time as principal of THS, [Complainant]'s immediate supervisor was the Region's superintendent, Pamela Benford (Benford), with whom [Complainant] often communicated orally and by email.⁴⁰ [Complainant] stated that Eric Robinson (Robinson) and Tiffany Sims (Sims) served as her assistant principals at THS.⁴¹ [Complainant] told OIG investigators that she believed that she had a positive relationship with Benford but was concerned that Benford was not supportive of [Complainant]'s concerns about THS.⁴²

Benford reported to the superintendent of DCSD.⁴³ That role had been filled by Dr. Steven Green (Green), until he left DCSD in November 2019, and Benford began reporting to the interim superintendent, Ramona Tyson (Tyson).⁴⁴ Tyson took on the role in November 2019 and stayed as interim superintendent of DCSD until she retired on June 30, 2020.⁴⁵ Tyson contends that she met [Complainant] when [Complainant] was principal at THS, but that Tyson did not regularly

³⁷ Attachment 21 to OIG Report – Letter from Ramona Tyson to [Complainant] (Jan. 8, 2020) at 2; Attachment 26 to OIG Report – Letter from Marissa Key to Jamel Crawford (Dec. 19, 2019) at 2.

³⁸ Attachment 21 to OIG Report – Letter from Ramona Tyson to [Complainant] (Jan. 8, 2020) at 2; Attachment 26 to OIG Report – Letter from Marissa Key to Jamel Crawford (Dec. 19, 2019) at 2.

³⁹ OIG Report at 2, Attachment 3 to OIG Report – OIG Notes from Interview with [Complainant] (Sept. 29, 2020) at 2.

⁴⁰ OIG Report at 2, Attachment 3 to OIG Report – OIG Notes from Interview with [Complainant] (Sept. 29, 2020) at 1.

⁴¹ OIG Report at 2, Attachment 3 to OIG Report – OIG Notes from Interview with [Complainant] (Sept. 29, 2020) at 1.

⁴² OIG Report at 2, Attachment 3 to OIG Report – OIG Notes from Interview with [Complainant] (Sept. 29, 2020) at 2.

⁴³ OIG Report at 4.

⁴⁴ OIG Report at 4; Attachment 4 to OIG Report – OIG Notes from Interview with Ramona Tyson (Oct. 20, 2020) at 1.

⁴⁵ Attachment 4 to OIG Report – OIG Notes from Interview with Ramona Tyson (Oct. 20, 2020) at 1.

communicate with [Complainant].⁴⁶ Rather, Tyson indicated to OIG investigators that she primarily interacted with Benford regarding issues in the region that included THS.⁴⁷

Disclosures to DCSD Leaders and Employees

In her complaint to OIG, [Complainant] stated that she expressed three areas of concern to DCSD employees and leaders: 1) the misuse of Title I funds; 2) the failure to comply with rules related to providing special education services; and 3) hiring practices that violated Georgia law related to the Strategic Waiver Program.

[Complainant] asserts that she voiced concerns to DCSD leaders and employees about how Title I funds were being used.⁴⁸ She contends that THS used Title I funds to employ two Title I academic coaches and one parent liaison, none of whom [Complainant] felt were necessary.⁴⁹ In her complaint to OIG, [Complainant] states that approximately half of THS's Title I budget was spent on these three employees.⁵⁰ [Complainant] asserts that she brought her concerns to: (1) Benford; (2) Candace Alexander (Alexander), who was the coordinator for the region supporting principals and the curriculum; (3) Culisha Curry (Curry), the region's hiring manager; (4) Arlinda Wilson (Wilson), DCSD's coordinator for federal programs; (5) Myiesha Warren (Warren), DCSD's executive director for the Office of Federal Programs; and (6) Monica Davis (Davis), the interim chief information officer.⁵¹ [Complainant] contends that she requested through the Office of Federal Programs and Benford that the funding be immediately withdrawn.⁵² She further asserts that she informed Benford, Wilson, Curry, and Warren that it was an abuse to hire two academic

⁴⁶ Attachment 4 to OIG Report – OIG Notes from Interview with Ramona Tyson (Oct. 20, 2020) at 2.

⁴⁷ Attachment 4 to OIG Report – OIG Notes from Interview with Ramona Tyson (Oct. 20, 2020) at 3.

⁴⁸ Attachment 3 to OIG Report – OIG Notes from Interview with [Complainant] (Sept. 29, 2020) at 2.

⁴⁹ Attachment 3 to OIG Report – OIG Notes from Interview with [Complainant] (Sept. 29, 2020) at 2.

⁵⁰ OIG Complaint at 4.

⁵¹ OIG Report at 4, Attachment 3 to OIG Report – OIG Notes from Interview with [Complainant] (Sept. 29, 2020) at 2; OIG Complaint at 4.

⁵² OIG Complaint at 4.

coaches with the same education certification and that achievement in the areas supervised by the coaches had declined over the last several years.⁵³ [Complainant] asserts that she told Benford, Wilson, and Curry of the “sheer wastefulness” regarding the parent liaison.⁵⁴ Tyson told investigators that she never dealt with [Complainant] on any Title I issues and that the only communication she ever received from [Complainant] about Title I issues was an email sent by [Complainant] a few months after [Complainant] was fired.⁵⁵

[Complainant] further asserts that she complained about what she perceived as non-compliance with individualized education plans (IEPs) and other special education support for students with disabilities.⁵⁶ The lead special education teacher who was assigned to THS was also assigned to other schools. [Complainant] recognized that there was a shortage of special education teachers across DCSD. She, however, asked the coordinator for special education and exceptional education, Linda Buck (Buck), to refrain from removing the lead special education teacher from THS and sending her to other schools so frequently.⁵⁷ [Complainant] expressed that she was concerned with the lack of trained staff and compliance with individualized education programs (IEPs), especially after hearing concerns from parents about case manager assignments and proper support.⁵⁸ She also expressed that it had become common practice for parents not to be invited.⁵⁹

[Complainant] wrote in her OIG complaint that she shared her concerns about services for special education students with Benford, Alexander, Buck, and Deborah Moore-Sanders (Moore-

⁵³ OIG Complaint at 4.

⁵⁴ OIG Complaint at 4.

⁵⁵ Attachment 4 to OIG Report – OIG Notes from Interview with Ramona Tyson (Oct. 20, 2020) at 2; Attachment 18 to OIG Report – Email communication between Ramona Tyson and [Complainant] (May 24-26, 2020).

⁵⁶ Attachment 3 to OIG Report – OIG Notes from Interview with [Complainant] (Sept. 29, 2020) at 2; OIG Complaint at 6.

⁵⁷ OIG Complaint at 6.

⁵⁸ OIG Complaint at 6.

⁵⁹ OIG Complaint at 6. [Complainant] does not make clear what she means by this, but possibly she is asserting that parents were not properly invited to take part in the forming and monitoring of IEPs.

Sanders), the Executive Director of Exceptional Services.⁶⁰ [Complainant] asserts that she requested assistance from DCSD's coordinator⁶¹ and informed the coordinator that she had reviewed numerous IEP documents which were outdated or whose goals were not being monitored.⁶²

During an interview with OIG investigators, Buck stated that she was not aware of special education issues that [Complainant] had raised.⁶³ She, however, did note that [Complainant] expressed concerns to her that the lead special education teacher assigned to THS could not be at THS all of the time.⁶⁴ Buck told OIG investigators that during her meetings with [Complainant] about special education, [Complainant] appeared to be satisfied and never followed up with Buck to ask for additional support.⁶⁵ Buck further told OIG investigators that she did not recall [Complainant] ever making complaints related to compliance with IEPs, but rather Buck recalled sending an email to [Complainant] because Buck was concerned about IEP compliance at THS.⁶⁶

Finally, [Complainant] raised concerns that DCSD had “subverted Georgia Board of Education policy relative to its Strategic Waiver.”⁶⁷ Specifically, [Complainant] highlighted that uncertified individuals were hired in violation of two provisions of the Georgia Code.⁶⁸ [Complainant] states in her complaint to OIG that she brought her concerns to “numerous central office staff,” human resources, her supervisor, and “executive members of Information Technology.”⁶⁹

⁶⁰ OIG Complaint at 6; OIG Report at 4.

⁶¹ It is not clear whether [Complainant] is referring to Buck or Alexander.

⁶² OIG Complaint at 6.

⁶³ Attachment 7 to OIG Report – OIG Notes from Interview with Linda Buck (Oct. 5, 2020) at 1.

⁶⁴ Attachment 7 to OIG Report – OIG Notes from Interview with Linda Buck (Oct. 5, 2020) at 2.

⁶⁵ Attachment 7 to OIG Report – OIG Notes from Interview with Linda Buck (Oct. 5, 2020) at 2.

⁶⁶ Attachment 7 to OIG Report – OIG Notes from Interview with Linda Buck (Oct. 5, 2020) at 2.

⁶⁷ OIG Complaint at 8.

⁶⁸ OIG Complaint at 8.

⁶⁹ OIG Complaint at 8; Attachment 16 to OIG Report – Emails between [Complainant], Culisha Curry, Pamela Benford, and Angelica Collins (Aug. 14, 2018 and Sept. 3, 2018) at 1-4.

PSC investigation and being placed on Administrative Leave with Pay

Griffith asserts that in September 2019, she was placed on administrative leave based on a complaint filed by one of her assistant principals, Robinson, regarding an investigation by the state PSC.⁷⁰

On September 16, 2019, the PSC sent [Complainant] a letter.⁷¹ The letter indicated that the PSC had conducted an investigation into allegations that [Complainant] had failed to disclose a criminal history, had a criminal history, and/or falsified information on her application.⁷² Specifically, the PSC found that [Complainant] had a felony charge of financial identity fraud prior to certification for which she completed PTI, but answered “no” on her application for certification with PSC to the question of whether she had participated in PTI for a felony or crime of moral turpitude.⁷³ The PSC recommended that [Complainant] be placed on a twenty contract-day suspension.⁷⁴

The same day that the PSC sent [Complainant] their letter and findings, September 16, 2019, [Complainant] forwarded those documents to Benford.⁷⁵ [Complainant] asserts that she assured Benford that the recommendation would be dismissed.⁷⁶ The next day, September 17, 2019, Benford sent [Complainant] a letter informing her that DCSD had received a report of alleged employee misconduct about [Complainant] and that [Complainant] was being placed on administrative leave with pay pending the results of the investigation.⁷⁷ The letter stated that being placed on administrative leave with pay is not “disciplinary” but rather is intended to allow DCSD

⁷⁰ Attachment 3 to OIG Report – OIG Notes from Interview with [Complainant] (Sept. 29, 2020) at 2.

⁷¹ Attachment 19 to the OIG Report – Letter from Paul Shaw to [Complainant] (Sept. 16, 2019).

⁷² Attachment 19 to the OIG Report – Letter from Paul Shaw to [Complainant] (Sept. 16, 2019) at 1.

⁷³ Attachment 19 to the OIG Report – Letter from Paul Shaw to [Complainant] (Sept. 16, 2019) at 4.

⁷⁴ Attachment 19 to the OIG Report – Letter from Paul Shaw to [Complainant] (Sept. 16, 2019) at 1.

⁷⁵ Attachment 20 to OIG Report – Email from [Complainant] to Pamela Benford (Sept. 16, 2019) at 1.

⁷⁶ Brief of [Complainant] (July 12, 2021) [hereafter [Complainant] Brief] at 3-4.

⁷⁷ Attachment 36 to the OIG Report – Letter from Pamela Benford to [Complainant] (Sept. 17, 2019) at 1.

the opportunity to investigate the claims and determine the appropriate action.⁷⁸ [Complainant] appealed the PSC's decision and, after a hearing, the Georgia State Office of State Administrative Hearings reversed the decision of the PSC on April 1, 2020.⁷⁹

Tyson indicated to OIG investigators that [Complainant] was placed on administrative leave by the former Superintendent, Green, with the agreement of DCSD's Office of Legal Affairs (OLA).⁸⁰ OIG investigators determined that the superintendent of DCSD is responsible and the ultimate decision-making official for placing an administrator on administrative leave with pay.⁸¹

Investigation into falsifying information and alleged theft and termination

While [Complainant] was on administrative leave, OLA began investigating whether [Complainant] lied on her application when she applied for a teaching job with DCSD in 2005.⁸² On October 1, 2019, DCSD filed an open records request with the Atlanta Police Department requesting disciplinary files related to [Complainant].⁸³ DCSD found that, in addition to [Complainant] inaccurately reporting on her application to PSC that she never participated in PTI after being charged with a felony, she also was dishonest on her application for a substitute teaching position with DCSD in 2005.⁸⁴ OLA noted that the PSC investigation concluded that [Complainant] was charged with a felony related to unauthorized purchases at Lowes in 2004, for which she was dismissed from the Atlanta Police Department, and also was charged with a misdemeanor of giving a false name to police in 2012.⁸⁵ OLA discovered that when [Complainant]

⁷⁸ Attachment 36 to the OIG Report – Letter from Pamela Benford to [Complainant] (Sept. 17, 2019) at 1.

⁷⁹ Attachment 37 to the OIG Report – *[Complainant] v. Prof'l Standards Comm'n*, Dkt. No. 2017245, Ga Office of Admin. Hearings (Apr. 1, 2020).

⁸⁰ Attachment 4 to OIG Report – OIG Notes from Interview with Ramona Tyson (Oct. 20, 2020) at 2.

⁸¹ OIG Report at 10.

⁸² OIG Report at 10; Attachment 26 to OIG Report – Letter from Marissa Key to Jamel Crawford (Dec. 19, 2019) at 1.

⁸³ Attachment 31 to OIG Report.

⁸⁴ Attachment 26 to OIG Report – Letter from Marissa Key to Jamel Crawford (Dec. 19, 2019) at 2.

⁸⁵ Attachment 26 to OIG Report – Letter from Marissa Key to Jamel Crawford (Dec. 19, 2019) at 2.

applied to work with DCSD in 2005 she answered “no” and failed to mention these prior arrests in response to questions whether she had ever been convicted or whether there were any pending charges against [Complainant] by federal, state, or municipal law enforcement authorities for a violation of federal, state, or municipal law.⁸⁶ Although it is not clear that the PSC investigation or any other investigation discovered a prior conviction, as opposed to a charge, or any pending charges against [Complainant] at the time of the investigations, OLA indicated that [Complainant] answered these questions untruthfully. OLA also concluded that [Complainant] lied when responding no to the questions 1) whether she had “resigned or been discharged from any position . . . while under suspicion of having engaged in criminal, immoral, or unprofessional conduct, or are you now under investigation for any such charge or have you resigned in lieu of being discharged;” and 2) whether she had “ever had any disciplinary action taken against you by a previous employer/credentialing or state licensing agency, including written reprimand, suspension, demotion, non-renewal other than Reduction in Force, termination, or any other form of disciplinary action in any state or county.”⁸⁷ OLA also concluded that [Complainant] was dishonest on her application when she listed that her reason for leaving the Atlanta Police Department was that she was “laid-off” when she was really dismissed on July 26, 2004.⁸⁸

Additionally, OLA indicated that while [Complainant] was on leave, it received a report that [Complainant] may have deposited a check into her personal account that was intended for THS.⁸⁹ On December 4, 2019, one of THS’s assistant principals, Tiffany Sims (Sims), sent an email to Benford notifying her of a potential theft by [Complainant].⁹⁰ On December 17, 2019,

⁸⁶ Attachment 26 to OIG Report – Letter from Marissa Key to Jamel Crawford (Dec. 19, 2019) at 2.

⁸⁷ Attachment 26 to OIG Report – Letter from Marissa Key to Jamel Crawford (Dec. 19, 2019) at 2.

⁸⁸ Attachment 26 to OIG Report – Letter from Marissa Key to Jamel Crawford (Dec. 19, 2019) at 2.

⁸⁹ Attachment 26 to OIG Report – Letter from Marissa Key to Jamel Crawford (Dec. 19, 2019) at 3.

⁹⁰ Attachment 25 to OIG Report – Email from Pamela Benford to Office of Legal Affairs and Employee Misconduct Packet (Dec. 17, 2019) at 1, 8. Benford stated that she did not receive the allegation until December 5, 2019.

Benford submitted an employee misconduct packet to OLA for its further review.⁹¹

The acting principal, Vivian Terry (Terry) and Sims, submitted statements that were made part of the packet.⁹² Those statements reported the following: When Terry arrived at THS she discovered unpaid bills and inquired of the administrative team about deposits made by vending representatives.⁹³ Sims told Terry that she had received a check or money order for \$950 from Ira Nobel (Nobel) in September.⁹⁴ When Terry asked if the check had been deposited, Sims indicated that she was not sure because she had given the check to [Complainant], who said she had to speak to the vendor because the amount of the money order was not enough.⁹⁵ Terry, Sims, and another Assistant Principal, Joel Boyce, met with Nobel who confirmed the amount of the money order.⁹⁶ The THS leaders asked if the money order could be traced to verify if it had been deposited, and Sims reported to Terry and another interim principal of THS, Andrew Tatum (Tatum), that the money order had been deposited and provided a photo of the front and back of the check.⁹⁷ Nobel stated that the money order was not made out to [Complainant], but rather it was made out to THS.⁹⁸ Someone other than Nobel had added [Complainant]'s name to the money order and

⁹¹ Attachment 25 to OIG Report – Email from Pamela Benford to Office of Legal Affairs and Employee Misconduct Packet (Dec. 17, 2019).

⁹² Attachment 25 to OIG Report – Email from Pamela Benford to Office of Legal Affairs and Employee Misconduct Packet (Dec. 17, 2019) at 4, 5; Attachment 26 to OIG Report – Letter from Marissa Key to Jamel Crawford (Dec. 19, 2019) at 3.

⁹³ Attachment 25 to OIG Report – Email from Pamela Benford to Office of Legal Affairs and Employee Misconduct Packet (Dec. 17, 2019) at 4, 5; Attachment 26 to OIG Report – Letter from Marissa Key to Jamel Crawford (Dec. 19, 2019) at 3.

⁹⁴ Attachment 25 to OIG Report – Email from Pamela Benford to Office of Legal Affairs and Employee Misconduct Packet (Dec. 17, 2019) at 4, 5; OIG Report at 10; Attachment 26 to OIG Report – Letter from Marissa Key to Jamel Crawford (Dec. 19, 2019) at 3.

⁹⁵ Attachment 25 to OIG Report – Email from Pamela Benford to Office of Legal Affairs and Employee Misconduct Packet (Dec. 17, 2019) at 4, 5; OIG Report at 10; Attachment 26 to OIG Report – Letter from Marissa Key to Jamel Crawford (Dec. 19, 2019) at 3.

⁹⁶ Attachment 25 to OIG Report – Email from Pamela Benford to Office of Legal Affairs and Employee Misconduct Packet (Dec. 17, 2019) at 4, 5.

⁹⁷ Attachment 25 to OIG Report – Email from Pamela Benford to Office of Legal Affairs and Employee Misconduct Packet (Dec. 17, 2019) at 4, 5; OIG Report at 10; Attachment 26 to OIG Report – Letter from Marissa Key to Jamel Crawford (Dec. 19, 2019) at 3.

⁹⁸ Attachment 25 to OIG Report – Email from Pamela Benford to Office of Legal Affairs and Employee Misconduct Packet (Dec. 17, 2019) at 4, 5; OIG Report at 10; Attachment 26 to OIG Report – Letter from Marissa Key to Jamel

deposited into a United Services Automobile Association (USAA) bank account.⁹⁹ Terry stated that Sims informed them that [Complainant] has a USAA bankcard because Sims had seen [Complainant] use the card.¹⁰⁰

A police officer also submitted a statement that was made part of the packet.¹⁰¹ His statement indicates that on December 6, 2019, he received information about a possible theft at THS involving [Complainant].¹⁰² The information indicated that [Complainant] had taken a money order for \$950 from “Sugar and Spice Vending” that was a payment to THS, altered it and then deposited the money order into [Complainant]’s own account.¹⁰³ The routing number on the money order was assigned to USAA, and so a subpoena was issued to USAA for [Complainant]’s banking statements and information.¹⁰⁴ The bank statement sent in response to the subpoena showed one deposit for \$950 on September 9, 2019, which matched the amount of the money order and the date recorded on the money order. The officer reported that Sims had received a call from Nobel, the owner of Sugar and Spice Vending, alerting her that the money order had been altered and the deposit information related to USAA.¹⁰⁵ The officer noted that THS uses Bank of America for its banking.¹⁰⁶ The officer stated that Nobel provided Sims with a text picture of the money

Crawford (Dec. 19, 2019) at 3.

⁹⁹ Attachment 25 to OIG Report – Email from Pamela Benford to Office of Legal Affairs and Employee Misconduct Packet (Dec. 17, 2019) at 4, 5; OIG Report at 10; Attachment 26 to OIG Report – Letter from Marissa Key to Jamel Crawford (Dec. 19, 2019) at 3.

¹⁰⁰ Attachment 25 to OIG Report – Email from Pamela Benford to Office of Legal Affairs and Employee Misconduct Packet (Dec. 17, 2019) at 4, 5; Attachment 26 to OIG Report – Letter from Marissa Key to Jamel Crawford (Dec. 19, 2019) at 3.

¹⁰¹ Attachment 25 to OIG Report – Email from Pamela Benford to Office of Legal Affairs and Employee Misconduct Packet (Dec. 17, 2019) at 10.

¹⁰² Attachment 25 to OIG Report – Email from Pamela Benford to Office of Legal Affairs and Employee Misconduct Packet (Dec. 17, 2019) at 10.

¹⁰³ Attachment 25 to OIG Report – Email from Pamela Benford to Office of Legal Affairs and Employee Misconduct Packet (Dec. 17, 2019) at 10.

¹⁰⁴ Attachment 25 to OIG Report – Email from Pamela Benford to Office of Legal Affairs and Employee Misconduct Packet (Dec. 17, 2019) at 10.

¹⁰⁵ Attachment 25 to OIG Report – Email from Pamela Benford to Office of Legal Affairs and Employee Misconduct Packet (Dec. 17, 2019) at 10.

¹⁰⁶ Attachment 25 to OIG Report – Email from Pamela Benford to Office of Legal Affairs and Employee Misconduct Packet (Dec. 17, 2019) at 10.

order and Sims alerted the principal of possible theft.¹⁰⁷ With that information, the police officer secured an arrest warrant for [Complainant] from a judge on the Dekalb County State Court.¹⁰⁸

On December 17, 2019, the warrant was issued for [Complainant]'s arrest.¹⁰⁹ [Complainant] was arrested for theft by conversion and fourth degree forgery.¹¹⁰ [Complainant] contends that her arrest was based upon a complaint from Sims, who wanted to become principal and was named principal after [Complainant] was fired.¹¹¹

Tyson told OIG investigators that she met with DCSD's Public Safety Chief, Bradley Goldberg (Goldberg), and OLA concerning the Terry's complaint.¹¹² Tyson told OIG investigators that Goldberg stated that [Complainant] had deposited the funds into her own personal bank account.¹¹³ Tyson stated that this then became a legal and law enforcement issue, and Tyson opened an investigation.¹¹⁴ Tyson represented that protocol was for information to be collected, which was then reviewed by the superintendent and submitted to OLA and then OLA makes a recommendation to the superintendent.¹¹⁵ Tyson indicated that, in this case, Benford submitted the packet of information, which Tyson reviewed and submitted to OLA.¹¹⁶ Tyson told OIG investigators that she based her decision to fire [Complainant] on the packet and on OLA's recommendation to fire [Complainant].¹¹⁷

OLA's investigation concluded that the allegation that [Complainant] falsified documents

¹⁰⁷ Attachment 25 to OIG Report – Email from Pamela Benford to Office of Legal Affairs and Employee Misconduct Packet (Dec. 17, 2019) at 10.

¹⁰⁸ Attachment 25 to OIG Report – Email from Pamela Benford to Office of Legal Affairs and Employee Misconduct Packet (Dec. 17, 2019) at 10.

¹⁰⁹ OIG Report at 10; Attachment 26 to OIG Report – Letter from Marissa Key to Jamel Crawford (Dec. 19, 2019) at 3.

¹¹⁰ Attachment 3 to OIG Report – OIG Notes from Interview with [Complainant] (Sept. 29, 2020) at 2.

¹¹¹ Attachment 3 to OIG Report – OIG Notes from Interview with [Complainant] (Sept. 29, 2020) at 2.

¹¹² Attachment 4 to OIG Report – OIG Notes from Interview with Ramona Tyson (Oct. 20, 2020) at 3.

¹¹³ Attachment 4 to OIG Report – OIG Notes from Interview with Ramona Tyson (Oct. 20, 2020) at 3.

¹¹⁴ Attachment 4 to OIG Report – OIG Notes from Interview with Ramona Tyson (Oct. 20, 2020) at 3.

¹¹⁵ Attachment 4 to OIG Report – OIG Notes from Interview with Ramona Tyson (Oct. 20, 2020) at 3.

¹¹⁶ Attachment 4 to OIG Report – OIG Notes from Interview with Ramona Tyson (Oct. 20, 2020) at 3.

¹¹⁷ Attachment 4 to OIG Report – OIG Notes from Interview with Ramona Tyson (Oct. 20, 2020) at 3.

and deposited school funds into a personal account were substantiated.¹¹⁸ OLA determined that these actions violated the provisions governing employee conduct that require honesty, demonstrating a high level of honesty, accuracy, and responsibility with public funds and property, and demonstrating professional conduct.¹¹⁹ OLA noted that the standard sanction for falsifying documents and depositing school funds into a personal account is termination but Benford recommended that OLA review the case further.¹²⁰ OLA concluded that “[b]ased on the arrest and charges” it is recommended that a charge letter be issued to [Complainant] with a recommendation that she be terminated.¹²¹

On January 18, 2020, Tyson issued a charge letter recommending that [Complainant] be terminated.¹²² The letter stated that Tyson was recommending to the DCSD Board of Education (Board) that [Complainant] be terminated and that the Board could affirm, amend, or alter Tyson’s recommendation.¹²³ Tyson stated that she was recommending termination “based upon the fact that [[Complainant]] deposited school funds into a personal account,” which Tyson wrote “amounts to ‘willful neglect of duties,’ ‘immorality,’ and ‘any other good and sufficient cause’” under provisions in the Georgia Fair Dismissal Act.¹²⁴ Tyson’s letter detailed the circumstances that went into her decision. First, it noted that the PSC sent notice to DCSD in September 2019 that it recommended a 20-day suspension for failing to disclose a criminal history. Next, it stated that on September 30, 2019, PSC sent DCSD an email notifying it that [Complainant] had been

¹¹⁸ OIG Report at 10; Attachment 26 to OIG Report – Letter from Marissa Key to Jamel Crawford (Dec. 19, 2019) at 3.

¹¹⁹ OIG Report at 10; Attachment 26 to OIG Report – Letter from Marissa Key to Jamel Crawford (Dec. 19, 2019) at 3-4.

¹²⁰ OIG Report at 10; Attachment 26 to OIG Report – Letter from Marissa Key to Jamel Crawford (Dec. 19, 2019) at 4.

¹²¹ OIG Report at 10; Attachment 26 to OIG Report – Letter from Marissa Key to Jamel Crawford (Dec. 19, 2019) at 4.

¹²² Attachment 21 to OIG Report – Letter from Ramona Tyson to [Complainant] (Jan. 8, 2020).

¹²³ Attachment 21 to OIG Report – Letter from Ramona Tyson to [Complainant] (Jan. 8, 2020) at 1.

¹²⁴ Attachment 21 to OIG Report – Letter from Ramona Tyson to [Complainant] (Jan. 8, 2020) 1.

dismissed from the Atlanta Police Department. Tyson further wrote that, in response, a Legal Analyst discovered on [Complainant]’s application for employment with DCSD that she stated that she had never resigned or had been discharged from any position and that [Complainant] indicated that her reason for leaving the police department was a layoff, while records provided in response to an open records request to the police department showed that she was dismissed during a pending employee misconduct investigation. Next, Tyson detailed what was in the investigation packet regarding the \$950 check and that [Complainant] had been arrested for theft by conversion and forgery. Finally, the letter told [Complainant] that there would be a hearing with a tribunal approved of by the Board and provided a list of witnesses who might be called and documentation that DCSD might present at the hearing.

On February 5, 2020, [Complainant] had a fair dismissal hearing before a tribunal, which ruled against Tyson’s recommendation to fire [Complainant].¹²⁵ The Board reversed the decision from the tribunal and terminated [Complainant]’s employment in a decision dated March 11, 2020.¹²⁶ On March 13, 2020, DCSD’s Interim Chief Legal Officer sent [Complainant]¹²⁷ a letter informing her of the Board’s decision and that her employment was terminated effective March 10, 2020.¹²⁸

[Complainant] asserts that DCSD did not follow its own due process policy when they terminated her.¹²⁹ The State Board of Education noted that the tribunal’s recommendation is only

¹²⁵ OIG complaint at 5; Attachment 3 to OIG Report – OIG Notes from Interview with [Complainant] (Sept. 29, 2020) at 2; Attachment 29 to OIG Report – *[Complainant] v. Dekalb County School District*, Dkt. No 2020-35, Ga. Bd. of Educ. (Oct. 1 2020) at 1.

¹²⁶ Attachment 29 to OIG Report – *[Complainant] v. Dekalb County School District*, Dkt. No 2020-35, Ga. Bd. of Educ. (Oct. 1 2020) at 1; Attachment 33 to OIG Report – *In re [Complainant]*, Dkt. No. 20-03, Dekalb Cnty. Sch. Bd. (March 11, 2020).

¹²⁷ The salutation in the letter is to Ms. Owens, but the letter is addressed to [Complainant] and the content of the letter make it clear that it is addressed to her.

¹²⁸ Attachment 34 to OIG Report – Letter from Marissa Key to [Complainant] (March 13, 2020).

¹²⁹ Attachment 3 to OIG Report – OIG Notes from Interview with [Complainant] (Sept. 29, 2020) at 2.

a recommendation, and the local board was “under no obligation” to continue to employ [Complainant] if the findings of fact indicate a violation.¹³⁰ On April 2, 2020, [Complainant] appealed DCSD’s decision to terminate her employment to Georgia’s State Board of Education.¹³¹ The State Board of Education affirmed DCSD’s Board of Education’s decision to terminate [Complainant].¹³²

[Complainant]’s *Whistleblower Complaint*

After [Complainant] was fired, she contacted OIG’s hotline.¹³³ On July 1, 2020, Respondent filed a complaint with OIG, which she dated June 1, 2020.¹³⁴ When asked which grants her complaint concerns, [Complainant] indicated that DCSD received funds under IDEA, Perkins, Title I, FAPE,¹³⁵ and other federal and state programs.¹³⁶

In her complaint, [Complainant] asserts that the employment of the two academic coaches and one parent liaison using Title I funds is a violation of the federal regulations requiring the use of Title I funds to reduce classroom size, and the rules and regulations governing the use of federal funds for personnel.¹³⁷ She additionally asserts that the hiring and retention of staff that either do not impact student achievement or where there is no demonstrated need and continuing to pay parent liaisons and facilitators even when they are not working is gross mismanagement and gross

¹³⁰ Attachment 29 to OIG Report – [Complainant] v. Dekalb County School District, Dkt. No 2020-35, Ga. Bd. of Educ. (Oct. 1, 2020) at 3.

¹³¹ Attachment 29 to OIG Report – [Complainant] v. Dekalb County School District, Dkt. No 2020-35, Ga. Bd. of Educ. (Oct. 1 2020) at 1.

¹³² Attachment 29 to OIG Report – [Complainant] v. Dekalb County School District, Dkt. No 2020-35, Ga. Bd. of Educ. (Oct. 1 2020) at 4.

¹³³ OIG Report at 2, Attachment 3 to OIG Report – OIG Notes from Interview with [Complainant] (Sept. 29, 2020) at 1.

¹³⁴ OIG Report at 1; OIG Complaint at 9. DCSD asserts that [Complainant] has also filed an appeal of her termination in the Dekalb County Superior Court, and lawsuits against DCSD and certain DCSD employees in the United States District Court for the Northern District of Georgia and in the Fulton County Superior Court all of which are pending.

¹³⁵ Although there is a requirement that schools provide free appropriate public education (FAPE), it is not clear that there is a specific grant FAPE grant program.

¹³⁶ OIG Complaint at 3.

¹³⁷ OIG Complaint at 4.

waste of U.S. Department of Education funds.¹³⁸

In relation to special education services, [Complainant] alleges that DCSD was violating laws regulations or rules by not meeting classroom size requirements, instructional delivery models, and compliance with IEPs.¹³⁹ [Complainant] also asserts that DCSD grossly mismanaged and wasted federal funds by receiving money for support that students were not receiving and misusing funds to expand the executive staff rather than supporting curriculum development and implementation.¹⁴⁰

[Complainant] asserts that her disclosures about the Title I fund misuse and failure to provide special education services were shared and raised throughout the 2018-2019 school year.¹⁴¹

In her complaint, [Complainant] identifies two personnel actions as retaliations for her disclosure. First, [Complainant] contends that she was placed on AWLP in retaliation for her disclosures. [Complainant] asserts that DCSD placed her on leave at the beginning of the 2019-2020 school year after DCSD was made aware of “baseless” complaints by an employee who was aggrieved by [Complainant]’s decision.¹⁴² [Complainant] also asserts that an outside agency found that the complaint had no merit¹⁴³

Second, [Complainant] argues that she was terminated in retaliation for her disclosures. [Complainant] contends that Tyson recommended her termination “after facts cleared me of the allegations presented” but the Board accepted Tyson’s recommendation and she was terminated.¹⁴⁴

[Complainant] asserts that her termination was not warranted. She additionally argues that the

¹³⁸ OIG Complaint at 4.

¹³⁹ OIG Complaint at 6.

¹⁴⁰ OIG Complaint at 6.

¹⁴¹ OIG Complaint at 5, 7.

¹⁴² OIG Complaint at 5.

¹⁴³ OIG Complaint at 5.

¹⁴⁴ OIG Complaint at 5.

District's policy does not align with her being fired and that others who were accused of similar "irregularities" were never fired, demoted, or arrested.¹⁴⁵ [Complainant] further asserts in her complaint that Benford completed the initial investigation packet to recommend termination.¹⁴⁶

As a remedy for the alleged retaliation, [Complainant] asks for an investigation and sanctions "as deemed appropriate." She additionally asked for a public apology, tenure buyout, and counseling.¹⁴⁷

OIG Investigation

After receiving [Complainant]'s complaint, OIG began its investigation. For the purposes of its investigation, OIG treated all of the disclosures as protected under the NDAA although it expressed skepticism that the allegations about violations of the strategic waiver system were protected disclosures.¹⁴⁸ OIG interviewed [Complainant] and at least 11 other people.¹⁴⁹ OIG reviewed documents that [Complainant] provided and, after submitting a document request to DCSD, reviewed the District's responsive documentation. In a Report of Investigation, dated June 18, 2021, OIG described its investigation and conveyed its findings. OIG concluded that [Complainant] met her burden of showing that the protected disclosures were a "contributing factor" in the decision to place her on ALWP.¹⁵⁰ OIG, however, concluded that DCSD provided clear and convincing evidence that it placed [Complainant] on ALWP for reasons that were independent of her disclosures.¹⁵¹ OIG also determined that her disclosures were not contributing factors in the decision to terminate her employment.¹⁵² From its determinations, OIG concluded

¹⁴⁵ OIG Complaint at 5, 7, 11.

¹⁴⁶ OIG Complaint at 5.

¹⁴⁷ OIG complaint at 8.

¹⁴⁸ OIG Report at 5.

¹⁴⁹ OIG's Report indicates that it interviewed 15 people, although there appears to be notes from interviews of only 12 persons attached to the redacted report. OIG Report at 5.

¹⁵⁰ OIG Report at 7-8, 12.

¹⁵¹ OIG Report at 12.

¹⁵² OIG Report at 8, 12.

that its investigation did not substantiate [Complainant]’s complaint that she was subject to prohibited reprisals because of protected disclosures.¹⁵³

Hearing and Decision Process Before the Office of Hearings and Appeals

On June 25, 2021, OIG sent a redacted version of its report of investigation to [Complainant], DCSD, and the Secretary.¹⁵⁴ The Director of the Office of Hearings and Appeals assigned the undersigned to preside over this matter that same day. Also on June 25, 2021, the undersigned issued a notice of hearing and order governing proceedings (OGP).¹⁵⁵ The OGP informed the parties of the process and their rights, including that the parties had a right to an administrative hearing on the record. The OGP noted that the hearing was not required, and that if “both parties decide to waive appearing for a hearing, then this decision will be based on the documentation in the OIG Report and any additional exhibits the parties choose to introduce.”¹⁵⁶

On June 29, 2021, the undersigned held a prehearing conference, using Microsoft Teams, with [Complainant] and counsel for DCSD. During the prehearing conference, the undersigned asked the parties if they wanted a hearing or wished to proceed based only on written and other documentary submissions. Initially, [Complainant] expressed that she wished to have the hearing and the District expressed that it wanted to waive the hearing. When, in response to a question, the undersigned stated that the tribunal does not have subpoena powers in this matter, [Complainant] expressed that she no longer wished to have a hearing and agreed to proceed with this matter based upon documents and written submissions.¹⁵⁷ On July 12, 2021, the parties filed

¹⁵³ OIG Report at 12.

¹⁵⁴ Letter from Sandra D. Bruce to the Hon. Miguel Cardona (June 25, 2021); Letter from Sandra D. Bruce to [Complainant] (June 25, 2021); Letter from Sandra D Bruce to Cheryl Watson-Harris (June 25, 2021). OIG also sent an unredacted version of the report, which was struck from the record. See Supplemental Order Governing Proceedings After Prehearing Conference (June 29, 2021). None of the information that has been redacted is being considered.

¹⁵⁵ See Notice of Hearing and Order Governing Proceedings (June 25, 2021).

¹⁵⁶ Id.

¹⁵⁷ 20 U.S.C. § 1234(g) indicates that in some matters delegated to the Office of Administrative Law Judges (OALJ)

their briefs with supporting documentation.

I. DCSD's Brief

DCSD argues that there is an insufficient basis to conclude that [Complainant] was subject to a prohibited reprisal.¹⁵⁸

Regarding the decision to place [Complainant] on ALWP, DCSD challenges OIG's finding that [Complainant] made protected disclosures that could have contributed to her being placed on leave. DCSD argues that [Complainant]'s disclosures were not protected by the NDAA because she merely identified "staffing issues" and it is not clear from the emails sent to Benford that [Complainant] was complaining about the use of federal money.¹⁵⁹ DCSD argues that the only communication that can be "construed to contain a complaint related to federal money" is an email in which [Complainant] complained about her request for laptops not being approved, and, whereas a protected disclosure requires allegations of waste or mismanagement of funds, this communication alleges that DCSD did not spend money.¹⁶⁰ DCSD additionally contends that [Complainant]'s concerns regarding the strategic waiver program are not protected under the NDAA because the program does not involve federal funds or grants.¹⁶¹

DCSD further contends that, even assuming [Complainant]'s disclosures are protected under the NDAA, the District has proven that it placed [Complainant] on ALWP for reasons independent of her disclosures and would have taken the same action regardless of her

at the U.S. Department of Education, the Administrative Law Judge has subpoena powers and authority to order other discovery. Matters under the NDAA were delegated to the Director of the Office of Hearings and Appeals, to be redelegated to either an Administrative Law Judge or an Administrative Judge. Because these matters do not need to be assigned to an Administrative Law Judge, however, 20 U.S.C. § 1234, which governs matters before OALJ, does not apply.

¹⁵⁸ Brief of the DeKalb County School District (July 12, 2021) [hereafter DCSD Brief] at 1.

¹⁵⁹ DCSD Brief at 7.

¹⁶⁰ DCSD Brief at 7-8.

¹⁶¹ DCSD Brief at 8.

disclosures.¹⁶² Specifically, DCSD asserts that it has provided evidence in support of its decision and that this evidence shows that there were people involved with the decision that did not know of the disclosures and that a concern for [Complainant] and a desire to protect her from negative backlash contributed to the decision.¹⁶³ DCSD also asserts that there is no strong reason for those who made the decision to want to retaliate against [Complainant] for her disclosures, and that in a separate lawsuit against DCSD and Benford, [Complainant] argued that the decision was motivated by race and gender discrimination.¹⁶⁴ Finally, DCSD states that the it regularly places employees on ALWP pending misconduct investigations as it did with [Complainant], including those who are not whistleblowers.¹⁶⁵

Regarding [Complainant]’s termination, DCSD asserts that the OIG investigation was correct to conclude that that [Complainant]’s disclosures were not a contributing factor in the decision to fire her. DCSD points out that there is no evidence that Tyson, who was the DCSD official who recommended termination, was aware of her disclosures.¹⁶⁶ DCSD further argues that it was the DCSD Board of Education and not Tyson who ordered [Complainant]’s termination and [Complainant] has not alleged that the members of school board were aware of her disclosures.¹⁶⁷

II. [Complainant]’s Brief

[Complainant] asserts that the facts support the conclusion that placing her on ALWP and terminating her employment were reprisals for her protected disclosures.¹⁶⁸ [Complainant] first adds to the narrative from the OIG report. [Complainant] asserts that DCSD knew in 2016 that she had a criminal conviction expunged from her record and that it took no action against her at

¹⁶² DCSD Brief at 8-9.

¹⁶³ DCSD Brief at 9.

¹⁶⁴ DCSD Brief at 9-10.

¹⁶⁵ DCSD Brief at 10.

¹⁶⁶ DCSD Brief at 10.

¹⁶⁷ DCSD Brief at 11.

¹⁶⁸ Brief of [Complainant] (July 12, 2021) [hereafter [Complainant] Brief] at 1, 4, and 12.

that time.¹⁶⁹ [Complainant] contends that during the 2018-2019 school year and the following school year she raised her concerns and was “scolded” by Benford “for her continued assertions of fraud, waste and abuse.”¹⁷⁰

[Complainant] asserts that the communications with DCSD leaders and staff were protected disclosures. She argues that some interviewees acknowledge her disclosures and that it is not plausible that her allegations regarding strategic staffing violations would not be perceived as disclosures.¹⁷¹

[Complainant] further attacks the reasons that DCSD gave for placing her on ALWP. She argues that those reasons do not align with the DCSD Board or state policies.¹⁷² She further asserts that statements regarding a previous job termination that are alleged to have been made on a 2005 DCSD job application are moot and that her 2016 job application did not address employment history from 15 years earlier and that these issues of her work history arose after she was on leave and could not have played a role in the decision.¹⁷³ She further argues that as a matter of law, “prior bad acts” are not grounds for termination or removal.¹⁷⁴

[Complainant] further argues that DCSD failed to follow many of its procedures for how it proceeded with her first being placed on ALWP and then terminated from employment. First,

¹⁶⁹ [Complainant] Brief at 2.

¹⁷⁰ [Complainant] Brief at 2-3. [Complainant] did not assert that Benford scolded her or otherwise remanded or spoke harshly to her in her OIG Complaint and there is no indication she made such allegations to OIG investigators. Although the parties were provided the opportunity to file briefing and submit supporting documentation, any new allegations of retaliation that have not been investigated by OIG and the District has not had an opportunity to address cannot be raised in [Complainant]’s filings.

¹⁷¹ [Complainant] Brief at 3.

¹⁷² [Complainant] Brief at 4.

¹⁷³ [Complainant] Brief at 4. It is not clear that DCSD has argued that statements on her 2005 or 2016 job applications played a role in the decision to place her on leave.

¹⁷⁴ [Complainant] Brief at 4. To the extent that [Complainant] is arguing that she was placed on leave and/or terminated because of her past arrests, it is not clear that the arrests themselves were ever stated as justification for the employment actions. To the extent that [Complainant] is arguing that, as a matter of law, DCSD cannot take personnel actions when it first discovers past incidents of dishonesty on a job or certification application or of theft, it is not clear what law [Complainant] argues prohibits taking the personnel actions at that time.

[Complainant] alleges that being placed on an indefinite leave is in violation of DCSD procedures that allow a school superintendent to place an employee on administrative leave for a maximum of 10 days.¹⁷⁵ Second, [Complainant] asserts that while she was on ALWP, Benford intentionally withheld key exculpatory information and subverted district protocols to create a context to support [Complainant]’s termination when the true motivation was her disclosures.¹⁷⁶

[Complainant] further argues that DCSD’s motivation for firing her was not the allegations against her. She contends that this as shown by DCSD’s failure to follow the Local School Accounting Rules and initiate an investigation in the Audits and Compliance office or permit her to repay the missing moneys rather than fire her.¹⁷⁷

[Complainant] notes that a tribunal rejected Tyson’s recommendation that she be fired and during the hearing, “a pattern of practice was uncovered which clearly established [[Complainant]’s] termination was aligned with her protected disclosures.”¹⁷⁸ Further elaborating, [Complainant] asserts that the practice used by complainant was used throughout the DCSD.¹⁷⁹

¹⁷⁵ [Complainant] Brief at 4. Whether the administrative leave imposed violated or followed DCSD procedures is not proof that [Complainant] was placed on leave in retaliation.

¹⁷⁶ [Complainant] Brief at 5.

¹⁷⁷ [Complainant] Brief at 6. The record does not indicate whether DCSD or its employees referred the matter to Office of Internal Audits and Compliance in addition to bringing the matter to OLA for its recommendation whether to terminate [Complainant]. Nothing has been submitted, however, that prohibits DCSD from also bringing concerns about possible theft to OLA and doing an analysis whether the employee accused of theft should be terminated. This would appear to be even more justified when OLA is already investigating allegations of other bad conduct like dishonesty on an employment application. Additionally, there is nothing in the record that indicates that requiring stolen or misplaced moneys to be returned is the only acceptable consequence of the theft or negligence. In fact, [Complainant] submitted as Exhibit 9 Section 34 of the Local School Accounting Handbook which specifically provides that the agreements that are executed for the repayment of lost moneys “continues in the event of a leave of absence, suspension or termination of employment prior to the fulfilment of the repayment agreement.” That the written policy provides for repayment after termination dictates that requiring repayment of lost moneys does not preclude DCSD from also terminating the employee. The provision of the Local School Accounting Handbook for Theft of Funds specifically provides that when funds are missing or stolen, the Principal or Administrator is required to “immediately” notify the police. *See* Attachment 24 to OIG Report – Local School Accounting Handbook: 35. Theft of Funds or Property.

¹⁷⁸ [Complainant] Brief at 7.

¹⁷⁹ In support of this argument, [Complainant] cites to examples of DCSD employees asking for people to pay for fundraising and the sale of items using cash applications or by bringing in cash to school. *See* [Complainant] Exhibits 21-25. There is a difference between collecting money using a cash application or collecting cash and what [Complainant] was charged with, namely adding her own name to a check or money order and then submitting the document in her own bank account.

She further argues that the findings of past audits indicate that others were treated differently and not punished show that the alleged theft was a pretext for termination “used to mask the deliberate reprisal.”¹⁸⁰

[Complainant] further asserts that case law requires that the DCSD Board of Education accept the tribunal’s finding of facts and affirm its recommendation that she not be fired.¹⁸¹ She also argues that because Benford had a duty to report her disclosures to the superintendent, the lack of documentation showing that Tyson was informed of the disclosures should not relinquish her culpability for reprisal.¹⁸² She additionally contends that DCSD did not show that it would have taken the same action independent of the disclosures because: (1) there is no policy requiring placing staff who challenge proposed sanctions on leave because it would be a denial of due process and an implication of guilt; (2) Benford and other executive staff members were aware of her disclosures and their actions rendered Tyson’s decision to be flawed or a “strategic maneuver to create plausible deniability;” and (3) DCSD cannot show that the actions taken against [Complainant] are similar to others who co-mingled funds “to meet the needs of their department.”¹⁸³ Finally, [Complainant] attacks the conclusions in the OIG report, arguing that she cannot imagine that Tyson was unaware of the disclosures when [Complainant] had communicated her concerns to so many executive staff members and that it sets a bad precedent that allows

¹⁸⁰ [Complainant] Brief at 7. The first audit [Complainant] submitted notes examples of times where money was not turned over in a timely manner, including situations where the money was kept in the bookkeeper’s drawer and turned over later. *See* [Complainant] Exhibit 12 – Financial Audit Report at 3. There is a difference between failing to timely turn in money and, as [Complainant] is alleged to have done, altering a check to deposit the money in the principal’s own account. Moreover, the audit specifically directs that if money is identified as missing or stolen, the matter should be reported to OLA and public safety and the penalties include suspension, termination, and criminal charges. *Id.* The second audit notes that there are examples of inaccurate or incomplete bookkeeping related to fundraising for ROTC which could indicate missing funds. *See* [Complainant] Exhibit 13 - *Financial Audit Review*, Chibuzor Motanya – Office of Audits and Compliance. This is different from DCSD finding evidence that it believes indicates that [Complainant] altered a check to deposit money designated for THS into her own bank account.

¹⁸¹ [Complainant] Brief at 7-8.

¹⁸² [Complainant] Brief at 8-9.

¹⁸³ [Complainant] Brief at 10.

districts to create a “cloud of deniability.”¹⁸⁴ She also attacks the investigation asserting that DCSD was able to choose which communications complied with the OIG investigation.¹⁸⁵

Having considered the OIG investigation report, those documents attached to that report, as well as the brief and additional evidence submitted by the parties, the file is closed and ready for decision.

PRINCIPLES OF LAW

41 U.S.C. § 4712 prohibits retaliation by a grantee such as DCSD against an employee for whistleblowing. The grantee cannot retaliate against an employee by discharging, demoting or discriminating against the employee for disclosing “information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant” to among others, a “management official or other employee of the contractor, subcontractor, or grantee who has the responsibility to investigate, discover, or address misconduct.”¹⁸⁶

When an employee believes that he or she has been subject to a reprisal prohibited by the statute, the employee may submit a complaint to OIG within three years of the reprisal.¹⁸⁷ If OIG determines that the complaint is not frivolous, that it alleges a violation of the statute, and that it has not been previously addressed in another federal or state judicial or administrative proceeding initiated by the employee, OIG will investigate the complaint and, upon completion of the

¹⁸⁴ [Complainant] Brief at 11.

¹⁸⁵ [Complainant] Brief at 11.

¹⁸⁶ 41 U.S.C. § 4712(a).

¹⁸⁷ 41 U.S.C. § 4712(b). [Complainant]’s complaint is dated June 2, 2020. OIG Complaint at 9. OIG has indicated in its report that it did not receive the complaint until July 1, 2020. OIG Report at 1. Either date is within three years of both personnel actions at issue in this matter.

investigation, submit a report of the findings of the investigation to the employee, the entity, and the Secretary. OIG must either make a determination that an investigation is not warranted or submit its report of an investigation within 180 days after receiving the complaint. If the employee agrees, the OIG can extend the time to investigate and report for an additional 180 days.¹⁸⁸

After receiving the OIG report, the Secretary or designee must decide within 30 days whether there is sufficient basis to conclude that the contractor or grantee concerned has subjected the complainant to a prohibited reprisal.¹⁸⁹

The whistleblower statute requires this decision to use the burdens of proof found in 5 U.S.C. § 1221(e).¹⁹⁰ First, the employee must show that (1) she or he was an employee of a federal grantee or contractor; (2) she or he made a disclosure protected by 41 U.S.C. § 4712; and (3) the disclosure was “a contributing factor” in the action taken against the employee.¹⁹¹ This burden can be met through circumstantial evidence, including evidence that “the official taking the personnel action knew of the [whistleblower] activity” and that the “personnel action occurred within a period of time such that a reasonable person could conclude that the ‘whistleblower’ activity was a contributing factor in the personnel action.”¹⁹² It follows, however, that in order to show that a protected disclosure was a contributing factor in the adverse personnel action, the employee must show that the individual who initiated the personnel action had knowledge of the disclosures before ordering or initiating the personnel action.¹⁹³

If an employee meets that burden, then the burden shifts to the employer to demonstrate

¹⁸⁸ Id.

¹⁸⁹ 41 U.S.C. § 4712(c)(1).

¹⁹⁰ 41 U.S.C. § 4712(c)(6).

¹⁹¹ See *Armstrong v. Arcanum Group, Inc.*, 897 F.3d 1283, 1287 (10th Cir. 2018); *Omwenga v. United Nations Found.*, 2019 WL 4860818, at *12 (D.D.C. Sept. 20, 2019); *Armstrong v. Arcanum Grp. Inc.*, 2017 WL 4236315, at *7 (D. Colo. Sept. 25, 2017).

¹⁹² See U.S.C. § 1221(e)(1); *Armstrong v. Arcanum Group, Inc.*, 897 F.3d 1283, 1287 (10th Cir. 2018).

¹⁹³ *Armstrong v. Arcanum Group, Inc.*, 897 F.3d 1283, 1287 (10th Cir. 2018); [*Complainant*] v. *Haw. Dep’t of Educ.*, Dkt. No. 19-81-CP, U.S. Dep’t of Educ. (Dec. 31, 2019) at 34-35, 41-42.

“by clear and convincing evidence that it would have taken the same personnel action in the absence of such disclosure.”¹⁹⁴ In *Carr v. Social Security Administration*, 185 F.3d 1318 (Fed. Cir. 1999), the United States Court of Appeals for the Federal Circuit provided a guideline for analyzing whether an employer, in that case a federal agency, has met its burden of showing by clear and convincing evidence that it would have taken the same adverse personnel action absent a protected whistleblower disclosure. The factors to be considered are: “the strength of the [employer’s] evidence in support of its personnel action; the existence and strength of any motive to retaliate on the part of the [employer’s] officials who were involved in the decision; and any evidence that the [employer] takes similar actions against employees who are not whistleblowers but who are otherwise similarly situated.”¹⁹⁵

After weighing the evidence, the Secretary, or designee, must issue an order either denying the relief requested by the employee or requiring one or more enumerated actions by the employer.¹⁹⁶

ANALYSIS

[Complainant] argues that she faced adverse personnel actions as a response to her disclosures. [Complainant] has shown that her disclosures were a “contributing factor” in the decisions to place her on ALWP, but not in the decision to terminate her employment. The DCSD has shown by clear and convincing evidence that DCSD had legitimate reasons for placing [Complainant] on ALWP.

[Complainant]’s Initial Burden

¹⁹⁴ See U.S.C. § 1221(e)(1); *Omwenga*, at *12; *Armstrong*, 2017 WL 4236315, at *7.

¹⁹⁵ *Carr v. Social Security Administration*, 185 F.3d 1318, 1323 (Fed. Cir. 1999) (citing *Greyer v. Dep’t of Justice*, 70 M.S.P.R. 682, 688 (1996), *aff’d*, 116 F.3d 1497 (Fed. Cir. 1997)).

¹⁹⁶ 41 U.S.C. § 4712(c)(1).

[Complainant] has the initial burden to show (1) she was an employee of a federal grantee or contractor; (2) she made a disclosure protected by 41 U.S.C. § 4712; and (3) the disclosure was “a contributing factor” in the action taken against her as an employee.

I. [Complainant] has proven that she was an employee of a federal grantee during the relevant time.

It is undisputed that [Complainant] was an employee of a recipient of Department-administered grants during the relevant time. DCSD is a recipient of multiple grant programs administered by the Department.¹⁹⁷ [Complainant] was a principal of a high school in DCSD when she was placed on leave in September 2019, and then terminated in March 2020.¹⁹⁸

II. [Complainant] has shown that she made two protected disclosures.

A. Two of [Complainant]’s disclosures were related to topics covered by the NDAA

In her complaint, [Complainant] asserted that she made protected disclosures about three topics: the misuse of Title I funds, the failure to provide required special education services, and violations of the Strategic Waiver School System. The concerns that [Complainant] raised about the use of Title I funds and about providing special education services are disclosures covered by the NDAA’s protection against whistleblower reprisals. The concerns that [Complainant] raised about hires violating the strategic waiver system, however, are not protected by 41 U.S.C. § 4712.

The NDAA covers disclosures of

[I]nformation that the employee reasonably believes is evidence of gross mismanagement of a Federal contract or grant, a gross waste of Federal funds, an abuse of authority relating to a Federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant.¹⁹⁹

¹⁹⁷ See Attachment 2 to OIG Report (Dkt. No. 4).

¹⁹⁸ See OIG Report at 2, 6; [Complainant] Brief at 2; OIG Complaint at 5, 7; Attachment 36 to the OIG Report – Letter from Pamela Benford to [Complainant] (Sept. 17, 2019); Attachment 33 to OIG Report – *In re* [Complainant], Dkt. No. 20-03, Dekalb Cnty. Sch. Bd. (March 11, 2020).

¹⁹⁹ 41 U.S.C. § 4712(a)(1).

Title I funds are provided through federal grants.²⁰⁰ It is reasonable that [Complainant] would believe that the use of approximately half of THS’s Title I funds to pay the salaries of three employees that [Complainant] believed were unnecessary and not contributing could be a gross waste or mismanagement of Title I funds and potentially a violation of the rules and regulations surrounding the use of Title I funds. Federal grants, through programs like the Individuals with Disabilities in Education Act, are used to provide special education services.²⁰¹ It is reasonable that [Complainant] would believe that the misuse of funds designated for providing special education services would constitute a gross mismanagement or waste of federal funds and that the failure to abide by the rules surrounding IEPs could be a violation of a law or rule related to a federal grant.

The third area of disclosures, relating to the violations of the Georgia school waiver program, are not disclosures covered by the NDAA. In her complaint to OIG, [Complainant] raised concerns that DCSD had “subverted Georgia Board of Education policy relative to its Strategic Waiver.”²⁰² Specifically, [Complainant] asserted that hiring practices violated two provisions of the Georgia state code.²⁰³ [Complainant], however, does not indicate how these alleged violations relate to a federal grant or contract or how they fit into any of the other categories of protected disclosures. There is no basis to find that the disclosures related to the strategic waiver program are protected by the NDAA.

B. [Complainant]’s disclosures were made to audiences covered by the NDAA.

In its report, OIG noted that among the documents that [Complainant] submitted were an

²⁰⁰ *Fast Facts*, Institute of Education Sciences: National Center for Education Statistics, *available at* <https://nces.ed.gov/fastfacts/display.asp?id=158> (last visited July 23, 2021)

²⁰¹ *About IDEA*, U.S. Dep’t of Educ., *available at* <https://sites.ed.gov/idea/about-idea/> (last visited July 23, 2021)

²⁰² OIG Complaint at 8 (emphasis added).

²⁰³ OIG Complaint at 8.

email message that she sent to Tyson on May 24, 2020,²⁰⁴ a complaint she made to the Georgia Department of Education (GDOE) about special education programs on May 28, 2020,²⁰⁵ and a letter that DCSD received from GDOE providing its decision regarding the complaint dated September 29, 2020.²⁰⁶ Additionally, attached to [Complainant]’s brief in this matter were exhibits that included a group of open record requests filed by [Complainant] in August 2020 and two emails from September 21, 2020 and October 10, 2020 that [Complainant] sent to the current superintendent of DCSD that included an allegation of reprisals by current DCSD employees in response to [Complainant]’s open records request that she filed in August 2020.²⁰⁷ Even if the concerns raised in these documents are protected disclosures under the NDAA, they would be disclosures made months after [Complainant] was placed on administrative leave and fired and, therefore, could not have played a role in the decisions to take these personnel actions.²⁰⁸

[Complainant] indicates that she made her disclosures about Title I to numerous people including her supervisor, the region’s hiring manager, DCSD’s coordinator for federal programs, and DCSD’s executive director for the office of federal programs.²⁰⁹ In addition to interviewing [Complainant] and Tyson, OIG interviewed at least 10 other DCSD employees. Nearly every

²⁰⁴ Attachment 18 to the OIG Report.

²⁰⁵ Attachment 28 to the OIG Report.

²⁰⁶ Attachment 23 to the OIG Report.

²⁰⁷ [Complainant] Exhibit 10 – Email from [Complainant] to Cheryl Watson-Harris (Sept. 21, 2020); [Complainant] Exhibit 11 – Email from [Complainant] to Cheryl Watson-Harris (Oct. 10, 2020); [Complainant] Exhibit 15 – Open Record Requests.

²⁰⁸ The emails that were attached to [Complainant]’s brief allege retaliation for her open records request that she made after she was terminated and for her actions demoting an employee and raising concerns about favorable and unethical treatment for the husband of an employee. *See* [Complainant] Exhibit 10 – Email from [Complainant] to Cheryl Watson-Harris (Sept. 21, 2020). They also raise concerns about statements made by the current principal of THS months after [Complainant] was terminated. *See* [Complainant] Exhibit 11 – Email from [Complainant] to Cheryl Watson-Harris (Oct. 10, 2020). Because the open records request was made after [Complainant] was fired, it is not relevant in this matter. Similarly, statements made by the current principal of THS months after [Complainant] was terminated could not have played a role in the decision to fire [Complainant]. And, the demotion of a former assistant principal and allegations about unethical favorable treatment for the husband of a DCSD employee are both not relevant to the whistleblowing asserted in this matter and have not been connected to any federal money.

²⁰⁹ OIG Report at 4, Attachment 3 to OIG Report – OIG Notes from Interview with [Complainant] (Sept. 29, 2020) at 2; OIG Complaint at 4.

single witness affirmatively stated that [Complainant] did not raise issues with them regarding Title I funding.²¹⁰ One witness, however, told OIG investigators that [Complainant] told the witness that she was not happy with Title I staff funding allocation.²¹¹ But the witness did not feel that [Complainant] had raised any allegations of wrongdoing.²¹² Another witness who stated that she did not recall [Complainant] complaining about Title I issues also stated that she recalled [Complainant] mentioning that she had a parent facilitator that the school did not need and that was using too much of the Title I budget.²¹³ Because the names of the witnesses are redacted, it is not possible to identify these witnesses. OIG indicated that among the witnesses they interviewed were the persons who [Complainant] listed in her complaint.²¹⁴ Therefore, this analysis assumes that the witnesses who acknowledged speaking to [Complainant] about staffing issues using too much of the Title I budget corroborate what [Complainant] said about making disclosures to, among others, Benford, the region's hiring manager, DCSD's coordinator for federal programs, and DCSD's executive director for the office of federal programs.²¹⁵ Additionally, one witness told OIG investigators that if [Complainant] had raised Title I issues, she would have been directed to Wilson, the Title I director, so the circumstances indicate that Wilson would have been notified of [Complainant]'s concerns.²¹⁶

²¹⁰ Attachment 5 to OIG Report – OIG Notes from Interview with Witness 1 (Oct. 7, 2020) at 2, 3; Attachment 6 to OIG Report – OIG Notes from Interview with Witness 4 (Oct. 21, 2020) at 1; Attachment 7 to OIG Report – OIG Notes from Interview with Linda Buck (Oct. 5, 2020) at 1, 2; Attachment 8 to OIG Report – OIG Notes from Interview with Deborah Moore Sanders (Oct. 5, 2020) at 1-2; Attachment 10 to OIG Report – OIG Notes from Interview with Witness 7 (Oct. 20, 2020) at 1; Attachment 11 to OIG Report – OIG Notes from Interview with Witness 6 (Oct. 21, 2020) at 1, 2; Attachment 12 to OIG Report – OIG Notes from Interview with Witness 5 (Oct. 21, 2020) at 2; Attachment 13 to OIG Report – OIG Notes from Interview with Witness 2 (March 23, 2021) at 2; Attachment 15 to OIG Report – OIG Notes from Interview with Witness 3 (Apr. 9, 2021) at 1..

²¹¹ Attachment 9 to OIG Report – OIG Notes from Interview with Witness 8 (Oct. 5, 2020) at 2.

²¹² Attachment 9 to OIG Report – OIG Notes from Interview with Witness 8 (Oct. 5, 2020) at 2.

²¹³ Attachment 5 to OIG Report – OIG Notes from Interview with Witness 1 (Oct. 7, 2020) at 2.

²¹⁴ OIG Report at 5.

²¹⁵ OIG Report at 4, Attachment 3 to OIG Report – OIG Notes from Interview with [Complainant] (Sept. 29, 2020) at 2; OIG Complaint at 4.

²¹⁶ Attachment 6 to OIG Report – OIG Notes from Interview with Witness 4 (Oct. 21, 2020) at 1; Attachment 12 to OIG Report – OIG Notes from Interview with Witness 5 (Oct. 21, 2020) at 2.

[Complainant] stated in her OIG complaint that she raised concerns about special education services to Benford, Alexander, and Buck, who was the Special Education Services and Exceptional Education Coordinator, and Moore-Sanders, who was the Executive Director of Exceptional Education.²¹⁷ None of the interviewees, including Buck and Moore-Sanders, stated that they recalled [Complainant] disclosing her concerns about special education services.²¹⁸ Despite indicating that she was not aware of any special education related issues that [Complainant] had at THS, however, Buck recalled [Complainant] raising concerns that the lead special education teacher who served THS and other schools was not at THS enough.²¹⁹

It is not clear that [Complainant] ever directly told any of the DCSD leaders that she believed there was waste or mismanagement of federal money. What witnesses have confirmed that she told them, however, corroborates that her disclosures could be reasonably understood to be allegations of waste and mismanagement of funds. And the audiences to whom she raised her concerns put her disclosures within the universe of disclosures covered under the NDAA.

The NDAA covers disclosures to, among others, a “management official or other employee of the [employer] who has the responsibility to investigate, discover, or address misconduct.”²²⁰ [Complainant] credibly asserts that she raised her Title I concerns to her supervisor, who is the regional superintendent, the region’s hiring manager, DCSD’s coordinator for federal programs,

²¹⁷ OIG Complaint at 6.

²¹⁸ Attachment 5 to OIG Report – OIG Notes from Interview with Witness 1 (Oct. 7, 2020) at 2, 3; Attachment 6 to OIG Report – OIG Notes from Interview with Witness 4 (Oct. 21, 2020) at 1; Attachment 7 to OIG Report – OIG Notes from Interview with Linda Buck (Oct. 5, 2020) at 1, 2; Attachment 8 to OIG Report – OIG Notes from Interview with Deborah Moore Sanders (Oct. 5, 2020) at 1-2; Attachment 9 to OIG Report – OIG Notes from Interview with Witness 8 (Oct. 5, 2020) at 2; Attachment 10 to OIG Report – OIG Notes from Interview with Witness 7 (Oct. 20, 2020) at 2; Attachment 11 to OIG Report – OIG Notes from Interview with Witness 6 (Oct. 21, 2020) at 1, 2; Attachment 12 to OIG Report – OIG Notes from Interview with Witness 5 (Oct. 21, 2020) at 2; Attachment 13 to OIG Report – OIG Notes from Interview with Witness 2 (March 23, 2021) at 2; Attachment 15 to OIG Report – OIG Notes from Interview with Witness 3 (Apr. 9, 2021) at 1.

²¹⁹ Attachment 7 to OIG Report – OIG Notes from Interview with Linda Buck (Oct. 5, 2020) at 1, 2.

²²⁰ 41 U.S.C. § 4712(a)(2).

and DCSD’s executive director for the office of federal programs.²²¹ She credibly contends that she raised her concerns about special education services to, among others, her supervisor, the Special Education Services and Exceptional Education Coordinator, and the Executive Director of Exceptional Education.²²² These people are DCSD management officials or employees who have the responsibility to investigate, discover, or address [Complainant]’s concerns with the Title I and/or special education services.

III. [Complainant] has met her burden of showing that the protected disclosures were contributing factors in the decisions to place her on administrative leave.

As to the final prong, [Complainant] sufficiently demonstrated her protected disclosures were contributing factors in the decision to place her on ALWP, but not in the decision to terminate her employment. To show that a protected disclosure is a contributing factor, [Complainant] must show that the person who initiated or implemented the action had knowledge of the disclosure.²²³ She must also show that the actions were personnel actions covered by the NDAA.²²⁴

A. [Complainant]’s whistleblowing was a contributing factor in placing her on Administrative Leave with Pay.

DCSD argues it does not believe that placing [Complainant] on administrative leave with pay (ALWP) was a punishment. It is, however, a personnel action covered by the NDAA.

When [Complainant] was placed on leave, the letter stated that being placed on administrative leave with pay is not “disciplinary” but rather is intended to allow DCSD the opportunity to investigate the claims and determine the appropriate action.²²⁵ Two of the witnesses interviewed by OIG investigators echoed this, stating that it is not a disciplinary action because

²²¹ OIG Report at 4, Attachment 3 to OIG Report – OIG Notes from Interview with [Complainant] (Sept. 29, 2020) at 2; OIG Complaint at 4.

²²² OIG Complaint at 6.

²²³ *Armstrong v. Arcanum Group, Inc.*, 897 F.3d 1283, 1286-1287 (10th Cir. 2018).

²²⁴ *[Complainant] v. Haw. Dep’t of Educ.*, Dkt. No. 19-81-CP, U.S. Dep’t of Educ. (Dec. 31, 2019) at 38-41.

²²⁵ Attachment 36 to the OIG Report – Letter from Pamela Benford to [Complainant] (Sept. 17, 2019) at 1.

[Complainant] kept her full pay and benefits.²²⁶ That witness told OIG investigators that if DCSD had taken the recommendation to suspend [Complainant] for 20 days, it would be without pay and would be a disciplinary action.²²⁷ DCSD once again argues in its brief that ALWP is not a disciplinary action.²²⁸

As this tribunal stated in *[Complainant] v. Hawaii Department of Education*, personnel actions under the NDAA include a suspension, removal, furlough, or reduction in grade or other disciplinary or corrective action and any other significant change in duties, responsibilities, or working conditions.²²⁹ DCSD may be correct that being placed on ALWP is not a suspension or other disciplinary or corrective action. Being involuntarily and publicly placed on leave and having another person serve as principal in [Complainant]'s absence, however, would be a significant change in duty, responsibility, or working conditions, and it is a personnel action covered by the NDAA.

OIG concluded that [Complainant] satisfied her burden of showing that her protected disclosures were contributing factors in the decision to place her on ALWP. Specifically, OIG concluded that Benford was involved in the decision to place [Complainant] on ALWP, that Benford knew of [Complainant]'s disclosures, and the disclosures were made close in time to the decision to take the personnel action.²³⁰ OIG's determination, however, appears to be based upon disclosures made related to the lack of compliance with the strategic waiver program.²³¹

Tyson stated that [Complainant] was placed on leave by the former DCSD superintendent,

²²⁶ Attachment 13 to OIG Report – OIG Notes from Interview with Witness 2 (March 23, 2021) at 1; Attachment 35 to OIG Report – OIG Notes from Interview with Witness 1 (May 3, 2021) at 2.

²²⁷ Attachment 13 to OIG Report – OIG Notes from Interview with Witness 2 (March 23, 2021) at 1.

²²⁸ DCSD Brief at 6.

²²⁹ Dkt. No. 19-81-CP, U.S. Dep't of Educ. (Dec. 31, 2019) at 39.

²³⁰ OIG Report at 6.

²³¹ OIG Report at 6-7.

Dr. Green.²³² [Complainant] never indicated that she made any protected disclosures to Green or that he was in contact with anyone related to the disclosures. The September 17, 2019 letter informing [Complainant] that she has been placed on ALWP pending the outcome of an investigation is signed by Benford and was delivered to [Complainant] by Benford.²³³ This came a day after [Complainant] sent Benford a copy of the notice she had received from the PSC recommending a 20-day contract suspension.²³⁴ There is no indication that any of the other people who [Complainant] contends she raised her concerns with played a role in the decision to place her on ALWP.

The burden to show that a protected disclosure was a “contributing factor” in a personnel action can be met through circumstantial evidence, including evidence that “the official taking the personnel action knew of the [whistleblower] activity” and that the “personnel action occurred within a period of time such that a reasonable person could conclude that the [whistleblower] activity was a contributing factor in the personnel action.”²³⁵

Most of the emails submitted to OIG by [Complainant] and by DCSD in response to OIG’s document request concern staffing issues and appear to relate to the disclosure about the strategic waiver program that is not a protected disclosure. Some emails, however, reference [Complainant]’s concerns about Title I and special education services.

On July 9, 2018, [Complainant] emailed Benford, Alexander, and one other DCSD employee about an audit request.²³⁶ In the email, [Complainant] indicates that she is requesting an audit of THS’s books, that she would like an identification of all Title I staff, and that an

²³² Attachment 4 to OIG Report – OIG Notes from Interview with Ramona Tyson (Oct. 20, 2020) at 2.

²³³ Attachment 36 to OIG Report – Letter from Pamela Benford to [Complainant] (Sept. 17, 2019)

²³⁴ Attachment 19 to the OIG Report – Letter from Paul Shaw to [Complainant] (Sept. 16, 2019); Attachment 20 to OIG Report – Email from [Complainant] to Pamela Benford (Sept. 16, 2019).

²³⁵ *Armstrong v. Arcanum Group, Inc.*, 897 F.3d 1283, 1287 (10th Cir. 2018); 5 U.S.C. § 1221(e)(1).

²³⁶ Attachment 16 to OIG Report at 23.

academic coach is being moved to a special education vacancy. On July 18, 2018, [Complainant] emailed Benford about the progress of multiple issues.²³⁷ Among the staffing updates were: 1. that [Complainant] had reached out to special education staff to seek volunteers for displacement and that the most recently hired teacher would be displaced to hire a football coach; and 2. the school might need to cut staffing from the Title I budget to offer instructional support. Even assuming these emails are sufficiently related to the Title I and special education services disclosures, the emails were sent over a year before [Complainant] was placed on leave. These emails were not sent close enough in time to have been a contributing factor in placing [Complainant] on leave.

In January 2019, [Complainant] emailed Alexander, Wilson, and Warren, and then forwarded her email to Benford, about the need for computers at THS.²³⁸ Although the subject of the email is “Title I Carry Over,” the email does not specifically mention any of [Complainant]’s concerns about Title 1. And, although this addresses how Title I funds were used, it does not allege that they are being wasted, rather it asserts that they are failing to be used for a purchase that [Complainant] supports. Additionally, this communication predates her being placed on ALWP by eight months and is unlikely to have played a role in a decision made that much later.

On February 25, 2019, [Complainant] emailed Wilson, copying Benford on the email, about [Complainant]’s failure to meet the deadlines to submit Title I summer school information, but there is nothing in the email that relates to any problems with the use of Title I funds or the improper hiring and retaining of the two educational coaches or parent liaison.²³⁹ On April 23, 2019, [Complainant] emailed Benford, Alexander, and another DCSD employee about a statement

²³⁷ Attachment 16 to OIG Report at 5.

²³⁸ Attachment 16 to OIG Report at 13-14, 17-18.

²³⁹ Attachment 16 to OIG Report at 6.

she would be releasing about a mural that was removed at THS.²⁴⁰ Although the email and statement referenced that THS adheres to the Title I requirements to include stakeholders in decisions, there is nothing in either the email or statement that references or mentions any of [Complainant]'s concerns about the misuse of Title I funds.

There is one email, however, which indicates that [Complainant]'s protected disclosures were contributing factors in the decision to place her on ALWP. On July 29, 2019, [Complainant] emailed a number of people, including Alexander, to notify them that the parent liaison that was funded for the 2018-2019 academic year would not be funded for the next academic year.²⁴¹ This could be seen as [Complainant] taking action because she believes that Title I funds have been mismanaged. And this email was sent closely enough in time to the decision to place her on ALWP for it to indicate that the disclosures, or at least the disclosures about Title I, might be a contributing factor in the decision to place [Complainant] on leave.

B. [Complainant]'s disclosures did not contribute to her termination

[Complainant] asserts that two supervisors played a role in the decision to fire her, Tyson and Benford. The evidence does not demonstrate that Tyson had knowledge of [Complainant]'s concerns or that [Complainant] voiced those concerns to Tyson before she made the decision to fire [Complainant]. And, although Benford had knowledge of the disclosures, the evidence presented does not indicate that she played a significant role in convincing Tyson to terminate [Complainant].²⁴² Additionally, the evidence does not show that any person or entity that did play a significant role in the decision to fire [Complainant] had knowledge of the protected disclosures

²⁴⁰ Attachment 16 to OIG Report at 8-9

²⁴¹ Attachment 16 to OIG Report at 7.

²⁴² DCSD argues in its brief that it was the Board of Education that fired [Complainant], and Tyson only recommended the firing, and there is no allegations or evidence that any of the board members had knowledge of the whistleblowing. DCSD Brief at 10-11. Even if it was the Board who actually fired [Complainant], Tyson's role in recommending to the Board to fire [Complainant] means that she plays a significant enough role in the personnel action that if she had previous knowledge of the whistleblowing it could be a contributing factor in the decision.

before [Complainant]’s employment was terminated.

Tyson told OIG investigators that [Complainant] did not communicate her concerns about Title I or special education services to Tyson until [Complainant] sent Tyson an email in May 2020, months after [Complainant] had been fired.²⁴³ Tyson stated that she was unaware of any complaints that [Complainant] made to Benford.²⁴⁴

OIG concluded that [Complainant]’s disclosures were not a contributing factor in the decision to fire her.²⁴⁵ OIG determined that there was no evidence that Benford communicated to Tyson about the disclosures or that Tyson otherwise knew about the whistleblowing such that the disclosures could have been a contributing factor in Tyson’s decision to fire [Complainant].²⁴⁶

[Complainant], however, is not required to present direct evidence to show that a disclosure was a contributing factor in a personnel action. Circumstantial evidence may be enough in some cases to show that if one employee or supervisor knew of a protected disclosure, it is highly likely that the supervisor who executed a personnel action had knowledge of the whistleblowing.

In *Armstrong v. The Arcanum Group Inc.*, the court stated that an employee cannot establish that their disclosure was a contributing factor in the decision to take a personnel action in violation of the NDAA without showing that the retaliator knew of the whistleblower's protected activity.²⁴⁷ In the similar context of allegations of retaliation for protected union activity, courts have noted that the knowledge of one supervisor cannot be automatically imputed to the decision-making supervisor.²⁴⁸ Courts have stated, however, that a tribunal can rely on circumstantial

²⁴³ Attachment 4 to OIG Report – OIG Notes from Interview with Ramona Tyson (Oct. 20, 2020) at 2, 3; Attachment 18 to OIG Report – Email communication between Ramona Tyson and [Complainant] (May 24-26, 2020).

²⁴⁴ Attachment 4 to OIG Report – OIG Notes from Interview with Ramona Tyson (Oct. 20, 2020) at 2.

²⁴⁵ OIG Report at 8.

²⁴⁶ OIG Report at 8-9.

²⁴⁷ 897 F.3d 1283, 1286 (10th Cir. 2018).

²⁴⁸ *Jim Walter Res. Inc. v. N.L.R.B.*, 177 F.3d 961, 963 (11th Cir. 1999); *Pioneer Natural Gas Co. v. N.L.R.B.*, 662 F.2d 408, 412 (5th Cir. 1981).

evidence to infer that one supervisor communicated information about protected activity to another.²⁴⁹ Additionally, even if there is no evidence that the decision-making supervisor had knowledge of the protected activity, a supervisor or employee with knowledge of the protecting activity playing a significant role in the personnel action might be sufficient.²⁵⁰

If Tyson had been in the role of superintendent when [Complainant] made her disclosures, the circumstances may have indicated that Benford or another DCSD employee would have likely mentioned the disclosures to Tyson. Tyson told OIG investigators that while serving as interim superintendent of DCSD, she would interact with Benford as her primary contact regarding issues within the region.²⁵¹ [Complainant] asserts that DCSD's policies require Benford, as regional superintendent, to report [Complainant]'s allegations to her supervisor, the DCSD superintendent.²⁵² Tyson further reported to OIG investigators that in a previous incident, when a teacher had reported to Benford that she felt harassed by the school principal, Benford brought the complaint to Tyson and the teacher directly reported the incident to Tyson.²⁵³ It seems likely that when Benford learned of [Complainant]'s concerns, she may have brought them to the superintendent.

In her OIG complaint, [Complainant] asserts that her disclosures about the Title I fund misuse and failure to provide special education services were shared and raised throughout the 2018-2019 school year.²⁵⁴ In her brief, [Complainant] amended this claim to argue that she made her disclosures “[d]uring the 2018-2019 school year and the following school year.”²⁵⁵ There is no evidence submitted that demonstrates that [Complainant] addressed her concerns about Title I

²⁴⁹ *Poly-America Inc. v. N.L.R.B.*, 260 F.3d 465, 490 (5th Cir. 2011); *Pioneer Natural Gas*, 662 F.3d at 412.

²⁵⁰ *Delchamps Inc. v. N.L.R.B.*, 585 F.2d 91, 95 (5th Cir. 1978).

²⁵¹ Attachment 4 to OIG Report – OIG Notes from Interview with Ramona Tyson (Oct. 20, 2020) at 3.

²⁵² [Complainant] Brief at 8.

²⁵³ Attachment 4 to OIG Report – OIG Notes from Interview with Ramona Tyson (Oct. 20, 2020) at 3.

²⁵⁴ OIG Complaint at 5, 7.

²⁵⁵ [Complainant] Brief at 2.

or special education after July 2019 or at any of the time when she was employed during the 2019-2020 academic year. During the 2018-2019 academic year and before November 2019 in the 2019-2020 academic year, Tyson was the board administrator and Green was DCSD's superintendent.²⁵⁶ [Complainant] has not alleged that Green had any role in the decision to fire her. And there is no evidence or statements that provides a basis for concluding that the DCSD board administrator would play a role in responding to, or have a reason to hear of, a principal's concerns about how Title I funds are used in a high school or how special education services are provided in that high school.

[Complainant] has not provided a sufficient basis for concluding that when Tyson became superintendent, Benford or any other DCSD employee would have relayed concerns that were communicated months before, predominately during another academic year. This is especially true because [Complainant] was able to remedy at least some of her concerns about Title I funding use at THS months before Tyson became superintendent when she withdrew the funding for the 2019-2020 academic year for the parent liaison that she believed was unnecessary.²⁵⁷ [Complainant]'s concerns about Title I funding, at least, would seemingly be less pressing by the 2019-2020 academic year. DCSD is a school district with approximately 15,500 employees and over 20 high schools.²⁵⁸ It is unlikely that with that many schools and that many employees for Tyson to oversee, Benford would have notified Tyson when she became superintendent about concerns raised by a principal at one of the high schools months earlier that had, in part, been remedied before the current academic year began.

²⁵⁶ OIG Report at 4; Attachment 4 to OIG Report – OIG Notes from Interview with Ramona Tyson (Oct. 20, 2020) at 1.

²⁵⁷ Attachment 16 to OIG Report at 7.

²⁵⁸ *About*, Dekalb County School District, *available at* <https://www.dekalbschoolsga.org/about/> (last visited on July 23, 2021); OIG Report at 2.

While the evidence indicates that Benford likely had knowledge of [Complainant]’s whistleblowing, it does not provide a basis for concluding that Benford played a sufficiently substantive role in the decision to fire [Complainant] for the disclosures to have been a contributing factor. Benford submitted the packet to Tyson and OLA that formed the basis for [Complainant]’s termination.²⁵⁹ That packet, however, does not state recommendations about the appropriate consequences for [Complainant].²⁶⁰ There is nothing that has been submitted that provides a basis for concluding that Benford had any significant role in the decision beyond administratively collecting relevant documents and submitting the packet to OLA and Tyson.²⁶¹ It was OLA that provided an analysis of the information in the packet. It was Terry and Sims who provided statements that formed the basis for the allegations of theft and Terry and Tatum that recommended that [Complainant] not be permitted to return to THS.²⁶² And [Complainant] does not allege that she ever made any disclosures to anyone at OLA, or to Terry, Tatum, or Sims. Rather, [Complainant] indicated to OIG investigators that Sims’s motivation might have been because Sims wanted to become principal at THS.²⁶³

The evidence that is presented in this matter fails to bridge the gap between anyone who had knowledge of [Complainant]’s disclosures before she was terminated and those who played a

²⁵⁹ IG Report at 4; Attachment 4 to OIG Report – OIG Notes from Interview with Ramona Tyson (Oct. 20, 2020) at 3; Attachment 25 to OIG Report – Email from Pamela Benford to Office of Legal Affairs and Employee Misconduct Packet (Dec. 17, 2019) at 1.

²⁶⁰ Attachment 25 to OIG Report – Email from Pamela Benford to Office of Legal Affairs and Employee Misconduct Packet (Dec. 17, 2019) at 1.

²⁶¹ [Complainant] asserts that Benford failing to obtain her statement before submitting the packet to Tyson and OLA indicates that she, motivated by [Complainant]’s disclosures, was trying to withhold exculpatory evidence that [Complainant] had in her possession. [Complainant] Brief at 5. Benford’s failure to provide [Complainant] an opportunity to be heard before the packet was submitted to OLA and Tyson does not equate to her playing a significant role in the decision to terminate [Complainant]. The evidence presented by [Complainant] of the failure to obtain [Complainant]’s statement is the checklist that accompanied the packet. *See* [Complainant] Exhibit 2. That checklist also shows that Benford did not submit a recommendation as was intended. If anything, these circumstances indicate that Benford played a smaller role in the decision to terminate [Complainant] than was intended by the process.

²⁶² Attachment 25 to OIG Report – Email from Pamela Benford to Office of Legal Affairs and Employee Misconduct Packet (Dec. 17, 2019) at 3-5.

²⁶³ Attachment 3 to OIG Report – OIG Notes from Interview with [Complainant] (Sept. 29, 2020) at 2.

sufficient role in her termination. Additionally, the decision to fire [Complainant] appears to have been first made in December 2019, when the acting principals of THS recommended that [Complainant] not be permitted to return,²⁶⁴ and OLA recommended that a charge letter be issued with a recommendation that [Complainant] be terminated. Disclosures that were made five months before the decision to terminate [Complainant] are unlikely to have been a contributing factor in the decision. It is highly probable that the discoveries made more closely in time to the decision to fire [Complainant] were the reasons for the decision, namely that [Complainant] allegedly lied on her job application and changed a money order to take \$950 that was intended for THS. Therefore, [Complainant] has not shown that her disclosures were a contributing factor in the decision to fire her.²⁶⁵

DCSD has Proven by Clear and Convincing Evidence That It Would Have Placed [Complainant] on Administrative Leave with Pay Regardless of the Protected Disclosures

Although [Complainant] has met her initial burden of showing that she made protected disclosures that were “contributing factors” in the decisions to place her on administrative leave with pay, DCSD has clearly and convincingly established that it would have taken the same action in the absence of her protected disclosures. [Complainant] has not made a *prima facie* case that her disclosures were a contributing factor in her termination. There is strong evidence in this record supporting reasons for DCSD’s decision on termination that are distinct from [Complainant]’s

²⁶⁴ Attachment 25 to OIG Report – Email from Pamela Benford to Office of Legal Affairs and Employee Misconduct Packet (Dec. 17, 2019) at 3.

²⁶⁵ [Complainant] argues that Benford’s decision to place her on ALWP served as a pretext for the decision to fire her, seemingly saying that if her disclosures were a contributing factor for being placed on leave they must also be a contributing factor for firing her. The main justifications for [Complainant]’s termination that are articulated in the documents were her theft of \$950 and her dishonesty on her job application, incidents of alleged misconduct that were discovered after she was already on leave. DCSD has never articulated that the fact that she was on leave is justification for firing her. And, even if Benford knew of her disclosures before placing her on leave, it does not mean that the allegations in the PSC report of dishonesty that provided the justification for placing [Complainant] on ALWP are motivated by her disclosures. There is no basis presented to conclude that anyone at the PSC or who was involved with its investigation knew of [Complainant]’s disclosures.

whistleblowing. Specifically, DCSD reasonably believed that [Complainant] altered a money order made to THS and then deposited that money order in her personal bank account and that she made misrepresentations in her 2005 application for employment. Because [Complainant] has not shown that the disclosures were contributing factors in firing her, however, it is not necessary to evaluate whether DCSD has clearly and convincingly shown it would have taken the same action regardless of the disclosures.²⁶⁶ *Carr* provides the factors to be considered when determining if DCSD has met its burden.²⁶⁷

Strength of DCSD’s Reasons for the Actions

The first *Carr* factor is the strength of DCSD’s evidence of a legitimate reason for placing [Complainant] on administrative leave with pay. [Complainant] has indicated that it was Benford who placed her on leave.²⁶⁸ There is clear and convincing evidence that Benford and other DCSD leaders had strong reasons for the employment action.

The September 17, 2019 letter from Benford to [Complainant] states that the DCSD was placing her on ALWP because it had received reports of alleged misconduct and was placing her on leave pending the results of an investigation.²⁶⁹ The letter further states that this action is intended to allow DCSD “an opportunity to examine the issues thoroughly and to determine appropriate action.”²⁷⁰ One witness told OIG investigators that this was standard practice for an employee to be placed on ALWP when there is an allegation and the DCSD needs to investigate the allegation, so the employee is placed on administrative leave while the District does the investigation.²⁷¹

²⁶⁶ See *Armstrong v. Arcanum Group, Inc.*, 897 F.3d at 1284-85 (10th Cir. 2018).

²⁶⁷ *Carr*, 185 F.3d at 1323.

²⁶⁸ [Complainant] Brief at 4.

²⁶⁹ Attachment 36 to the OIG Report – Letter from Pamela Benford to [Complainant] (Sept. 17, 2019) at 1.

²⁷⁰ Attachment 36 to the OIG Report – Letter from Pamela Benford to [Complainant] (Sept. 17, 2019) at 1.

²⁷¹ Attachment 35 to OIG Report – OIG Notes from Interview with Witness 1 (May 3, 2021) at 2.

Another witness provided OIG investigators an additional reason, namely that [Complainant] was placed on leave to protect her because of negative feedback from the school, especially because she had made a lot of changes as the new principal of the school and a lot of the employees at THS did not like the changes.²⁷²

The PSC's recommendation that [Complainant] be suspended for 20 contract days was reversed in April 2020.²⁷³ The Georgia State Administrative Law Judge in that matter concluded that she was not intentionally dishonest when answering questions on her application for certification.²⁷⁴ [Complainant] indicates in her brief that she told Benford that [Complainant] was confident the recommended suspension would be reversed when she told Benford about the PSC decision.²⁷⁵

Even if [Complainant] expressed to Benford that she believed that the PSC recommendation would be overturned, DCSD had compelling reasons to place her on ALWP. Benford was presented with a finding from the PSC that [Complainant] was dishonest when she applied for certification to be a teacher and a recommendation from the PSC that [Complainant] be suspended for 20 contract days, or approximately one month.²⁷⁶ A principal of a school has been called its chief instructional leader²⁷⁷ and the leader of a campus.²⁷⁸ The Supreme Court of the United States has noted that providing public education is essential to governments and that it “ranks at the very apex of the function of a State.”²⁷⁹ And, noting this, a federal circuit court has

²⁷² Attachment 13 to OIG Report – OIG Notes from Interview with Witness 2 (Mar. 23, 2021) at 1.

²⁷³ Attachment 37 to the OIG Report – [Complainant] v. Prof'l Standards Comm'n, Dkt. No. 2017245, Ga Office of Admin. Hearings (Apr. 1, 2020).

²⁷⁴ Attachment 37 to the OIG Report – [Complainant] v. Prof'l Standards Comm'n, Dkt. No. 2017245, Ga Office of Admin. Hearings (Apr. 1, 2020) at 3.

²⁷⁵ [Complainant] Brief at 3-4.

²⁷⁶ Attachment 19 to OIG Report – Letter from Georgia Professional Standards Commission to [Complainant] (Sept. 16, 2019).

²⁷⁷ See *Quality Data: The Role of the Principal*, U.S. Dep't of Education: Institute of Education Sciences: Nat'l Center for Educ. Statistics, available at https://nces.ed.gov/forum/pdf/tip_principal.pdf (last visited July 23, 2021).

²⁷⁸ See *Jenkins v. Crosby Indep. Sch. Dist.*, 537 S.W.3d 142, 156 (Tex. App. June 15, 2017).

²⁷⁹ *Wisconsin v. Yoder*, 406 U.S. 205, 213 (1972).

written that “the state's high interest in education . . . requires effective principals in its public schools.”²⁸⁰ The PSC determined that [Complainant] was dishonest when asking the state for certification to teach students. It is reasonable that faced with this serious allegation against the principal of a school, Benford would want to place [Complainant] on ALWP to protect her and the school until DCSD could sufficiently determine the validity of the allegations.

Strength of Motive to Retaliate

The second *Carr* factor is the existence and strength of any motive to retaliate on the part of the DCSD officials who were involved in the decision. There is no strong reason for Benford or any other DCSD leader or employee to retaliate against [Complainant] for her disclosures.

The OIG Report indicates one witness did not recall [Complainant] complaining about Title I issues but did recall [Complainant] mentioning that she had a parent facilitator that the school did not need and that was using too much of the Title I budget.²⁸¹ That witness, however, noted that [Complainant] had mentioned making a change in staffing to address the issue and because the principal had the final say on staffing, the witness did not think this would be a major issue.²⁸² Another witness similarly noted, in response to the email about not maintaining the parent liaison role, that a principal may request changes to Title I staffing and this was just an example of one such staffing change.²⁸³ Another witness told OIG investigators that because the principal of the school is responsible for the use of Title I funds, it would be in her school plan and that, as principal, she could make changes.²⁸⁴ That same witness noted that although [Complainant] mentioned that she was not happy with the use of Title I funds and felt that the current use of Title

²⁸⁰ *Peterson v. Minidoka Cnty. Sch. Dist. No. 331*, 118 F.3d 1351, 1357 (9th Cir. 1997).

²⁸¹ Attachment 5 to OIG Report – OIG Notes from Interview with Witness 1 (Oct. 7, 2020) at 2.

²⁸² Attachment 5 to OIG Report – OIG Notes from Interview with Witness 1 (Oct. 7, 2020) at 2.

²⁸³ Attachment 6 to OIG Report – OIG Notes from Interview with Witness 4 (Oct. 21, 2020) at 2.

²⁸⁴ Attachment 9 to OIG Report – OIG Notes from Interview with Witness 8 (Oct. 5, 2020) at 1, 2.

I staffing resources was unwise, that she did not allege any wrongdoing.²⁸⁵ During the summer after her first year as principal, [Complainant] was able to eliminate the parent liaison position.²⁸⁶ Although [Complainant] expressed some concerns about how Title I funds were being spent, there is no evidence that she was expressing systemic problems or intentional wrongdoing. It is unlikely that [Complainant]’s disagreements about the need for three faculty members, especially when [Complainant] had the authority to address her concerns herself, would cause any significant problems for DCSD, Benford or any other DCSD employees or leaders, or would provide any real reason to retaliate.

As noted above, [Complainant] once again raised her concerns in numerous open records requests and emails and in a complaint to the GDOE months after she was fired. These documents were generated many months after [Complainant] was placed on leave, and could not have played a role in the decision to place her on ALWP. Some of the documents, however, show there were some deficiencies in the special education services that DCSD was providing. The GDOE concluded that (1) for multiple students DCSD failed to adequately monitor progress and/or provide periodic progress reports to parents; (2) for one student DCSD failed to provide services while a student was incarcerated; and (3) for multiple students, there was inadequate parent participation in the IEP process.²⁸⁷ As a result GDOE ordered DCSD to notify the parents of students affected by the deficiencies in providing service, to monitor progress, report progress to parents and include parents in the process as required by the law, review and revise policies, practices, and procedures, and provide training to teachers and administrators at THS.²⁸⁸

²⁸⁵ Attachment 9 to OIG Report – OIG Notes from Interview with Witness 8 (Oct. 5, 2020) at 2.

²⁸⁶ Attachment 9 to OIG Report – OIG Notes from Interview with Witness 8 (Oct. 5, 2020) at 2.

²⁸⁷ Attachment 23 to OIG Report – Letter from Zelphine Smith-Dixon to Cheryl Watson-Harris (Sept. 29, 2020) at 60-67.

²⁸⁸ Attachment 23 to OIG Report – Letter from Zelphine Smith-Dixon to Cheryl Watson-Harris (Sept. 29, 2020) at 67-68.

DCSD noted in its brief that GDOE issued a report in September 2020 after an investigation that “concluded that some of Ms. [Complainant]’s allegations were substantiated, while other were not” and that DCSD “has complied with all remedial measures ordered by the State Department of Education.”²⁸⁹

Although DCSD failure to comply with rules and laws surrounding providing special education services may have been disconcerting, its failures are unlikely to cause major problems for DCSD or its employees. The GDOE provides for schools to take corrective action when not in compliance with special education rules and has resources in place to provide technical assistance to help districts achieve those goals indicating that it is not unprecedented for a school district to face these issues.²⁹⁰

[Complainant] expressed concerns about serious issues, namely how Title I funds are spent and whether students are receiving the special education services as required.²⁹¹ But these disclosures do not assert intentional wrongdoing. They do not assert fundamental problems or malfeasance regarding THS’s participation in the Title I programs or special education services. They raise concerns that need to be addressed to best provide educational services to students and efficiently run THS. But they also raise concerns that can be addressed without any apparent penalty to DCSD, THS, or the DCSD employees. And in the case of the Title I issues, it appears that [Complainant] was able to address her concerns, at least partially, by herself. Under the circumstances, it is highly improbable that the concerns that [Complainant] expressed would

²⁸⁹ Dekalb County School District Brief at 3 n. 2.

²⁹⁰ See *Special Education Services and Support: Formal Complaints*, Ga. Dep’t of Education, available at <https://www.gadoe.org/Curriculum-Instruction-and-Assessment/Special-Education-Services/Pages/Formal-Complaints.aspx> (last visited July 23, 2021).

²⁹¹ [Complainant] also raised concerns about the special education teacher not spending enough time at THS. While [Complainant] does not appear to agree with the amount of time the teacher spent at THS, it is not clear that she was alleging that the assignments of the teacher indicated wrongdoing or that they violated any laws or amounted to a waste of misuse of federal funds.

motivate Benford or any other DCSD leader or employee to want to retaliate.

Treatment of Other Similarly Situated Employees

The final *Carr* factor is comparing the action taken against [Complainant] with other DCSD employees who were not whistleblowers but who are otherwise similarly situated.

DCSD provided letters from between February 2018 and February 2020 addressed to four different employees who were placed on ALWP.²⁹² These letters are signed by Benford and three other regional superintendents. In every one of those cases, the letters indicates that after DCSD received reports of misconduct, it placed the employee on ALWP pending the results of an investigation to allow DCSD the opportunity to examine the situation and determine the appropriate actions. This evidence shows that when Benford received a report from the PSC investigation that stated [Complainant] had been found to have been dishonest, Benford took the same action as she and other regional supervisors took when non-whistleblowers were accused of misconduct, placing them on ALWP pending DCSD's investigation into the matter.

[Complainant] asserted in her complaint to OIG that DCSD does not have a policy and has never removed a principal pending the outcome of a PSC investigation.²⁹³ She additionally lists three other persons who were “subjects of PSC investigations and never removed from their assignments.”²⁹⁴ [Complainant] has not provided any details about these three individuals and she provides no information regarding the PSC recommendation for these other persons. Notably [Complainant] was not placed on ALWP during the PSC investigation. She was placed on ALWP only after PSC issued a recommendation for suspension.²⁹⁵ [Complainant] was placed on ALWP

²⁹² DCSD Exhibit 2.

²⁹³ OIG Complaint at 7, 11.

²⁹⁴ OIG Complaint at 7, 11.

²⁹⁵ Attachment 19 to OIG Report – Letter from Georgia Professional Standards Commission to [Complainant] (Sept. 16, 2019); Attachment 36 to the OIG Report – Letter from Pamela Benford to [Complainant] (Sept. 17, 2019).

while DCSD investigated. [Complainant]’s list of other individuals under investigation provides no evidence the PSC made an adverse recommendation that would have prompted DCSD to conduct its own investigation or provide a reason to place those individuals on paid leave. [Complainant] asserts that the DCSD knew in 2016 that she had a criminal conviction expunged from her record and that it took no action against her at that time.²⁹⁶ In support, [Complainant] provided a 2017 letter from the PSC to the DCSD superintendent informing the superintendent that someone had filed a complaint with the PSC alleging that [Complainant], who was a vice principal at another school at that time,²⁹⁷ had violated the standards of honest and legal compliance and asking DCSD to investigate the matter.²⁹⁸

The letter does not provide any specifics about the accusations against [Complainant], and, therefore, does not establish that DCSD knew about [Complainant]’s past criminal charges. The letter does show that at least in one instance, DCSD did not place an employee on ALWP when there was an allegation of misconduct against the employee.

DCSD’s submissions demonstrate that the decision to place [Complainant] on administrative leave with pay is consistent with how multiple other DCSD employees were treated. [Complainant]’s submission shows, however, that DCSD was not always consistent. The decision to place [Complainant] on ALWP in the face of allegations of misconduct was not a unique action that DCSD only took with [Complainant] after she made her disclosures. The evidence, however, does not concretely establish that it is consistently DCSD’s standard procedure to place an employee on ALWP in response to allegations of misconduct, whether the accused employee is a whistleblower or not.

²⁹⁶ [Complainant] Brief at 2.

²⁹⁷ Attachment 3 to OIG Report – OIG Notes from Interview with [Complainant] (Sept. 29, 2020) at 1.

²⁹⁸ See [Complainant] Exhibit 14 – Letter from Kelly Henson to Superintendent of DeKalb County School District (Feb. 10, 2017).

**There is a High Probability that DCSD Would Have Placed [Complainant] on ALWP
Regardless of Her Disclosures**

While the clear and convincing standard requires significant proof, it does not call for the “highest levels of proof.”²⁹⁹ Rather, it requires the fact finder to determine that there is a highly probability that a fact is true.³⁰⁰ In this case, Benford and DCSD had a compelling reason to place [Complainant] on ALWP, little or no motivation to retaliate, and acted in a way that is consistent with how some other employees were treated. It is highly probable that Benford and the DCSD did not place [Complainant] on administrative leave with pay in reprisal for her disclosures.

CONCLUSIONS OF LAW

1. [Complainant] has met her burden of showing that she was an employee of a federal grantee.
2. [Complainant] has met her burden of showing that she made protected disclosures to numerous management officials or DCSD employees with the responsibility and authority to address her concerns related to the misuse of Title I funds and inadequacies with providing services to students with disabilities.
3. [Complainant] failed to show that her disclosures about the Georgia Strategic Waiver program were disclosures covered by the NDAA whistleblower protections.
4. [Complainant] has met her burden of showing that her protected disclosures were contributing factors in the decisions to put her on administrative leave with pay.
5. [Complainant] has not shown that her disclosures were contributing factors in the

²⁹⁹ See *U.S. v. Owens*, 854 F.2d 432, 435-36 (11th Cir. 1988).

³⁰⁰ See *Colorado v. New Mexico*, 467 U.S. 310, 316 (1984); *U.S. v. Owens*, 854 F.2d 432, 436 (11th Cir. 1988); *Cornell v. Nix*, 119 F.3d 1329, 1334-35 (8th Cir. 1997); *Flores v. Spearman*, 2016 WL 8136629, at *6, 9 (C.D. Cal. Nov. 17, 2016).

decision to terminate her employment.

6. The Dekalb County School District has proven by clear and convincing evidence that it would have placed [Complainant] on administrative leave with pay in the absence of her protected disclosures.

7. There is an insufficient basis to conclude that the Dekalb County School District retaliated against [Complainant] for her protected disclosures.³⁰¹

ORDER

The relief requested by [Complainant] is **DENIED**.

APPEAL RIGHTS

This order constitutes an order denying relief issued by the head of the executive agency under 41 U.S.C. § 4712(c)(1), pursuant to the authority delegated by the Secretary of Education. This is the final decision of the Department of Education on the matter. The statute does not authorize motions for reconsideration. The following language summarizes adversely affected parties' rights to appeal this order as set forth by the NDAA. This paragraph is not intended to alter or interpret the applicable rules or to provide legal advice. Because a final agency order has been issued denying the complainant her requested relief, she has exhausted all administrative remedies and may, within two years of this decision, bring a de novo action at law or equity against Dekalb County School District "to seek compensatory damages and other relief available under this section in the appropriate district court of the United States, which shall have jurisdiction over

³⁰¹ Some Article III courts have concluded that government entities may be immune from liability in an NDAA whistleblower reprisal action under 41 U.S.C. § 4712. *See Texas Educ. Agency v. Dep't of Educ.*, 992 F.3d 350 (5th Cir. 2021); *Slack v. Washington Metro. Transit Auth.*, 353 F.Supp.3d 1, 10-11 (D.D.C. Jan. 11, 2019). Because Dekalb County School District was not found to be liable in this matter, however, this decision does not need to reach whether DCSD would have been immune from liability based upon sovereign immunity.

such an action without regard to the amount in controversy.”³⁰²

Additionally, any person adversely affected or aggrieved by this order may obtain review in the United States court of appeals for a circuit in which the reprisal is alleged to have occurred. No petition for review may be filed more than 60 days after issuance of this order. Review shall conform to chapter 7 of Title 5. Filing an appeal shall not act to stay the enforcement of this order, unless a stay is specifically entered by the court.³⁰³

DATE OF DECISION: July 23, 2021

Daniel J. McGinn-Shapiro
Administrative Law Judge

³⁰² 41 U.S.C. § 4712(c)(2).

³⁰³ 41 U.S.C. § 4712(c)(5).